

NOMINATIONS OF ALVARADO, HEWITT, DEL JUNCO, HEADLEE, AND MEHLE

HEARING BEFORE THE COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

NOMINATIONS OF SUSAN E. ALVARADO AND TIRSO DEL JUNCO, M.D.,
TO BE GOVERNORS OF THE U.S. POSTAL SERVICE; HUGH HEWITT, TO
BE DEPUTY DIRECTOR OF THE OFFICE OF PERSONNEL MANAGE-
MENT; RICHARD H. HEADLEE AND ROGER W. MEHLE, TO BE MEM-
BERS OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

JUNE 24, 1988

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NOMINATIONS OF ALVARADO, HEWITT, DEL JUNCO, HEADLEE, AND MEHLE

FRIDAY, JUNE 24, 1988

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:05 a.m., in room SD-342, Dirksen Senate Office Building, Hon. David Pryor, presiding.

Present: Senators Pryor, Stevens, Cohen, and Trible.

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. The Committee will come to order.

I apologize for being late. I have a very short statement before we hear from our nominees for these respective positions.

Senator Glenn has asked me to chair today's hearing to consider the nominations of Hugh Hewitt to be Deputy Director of the Office of Personnel Management; Susan Alvarado and Tirso del Junco to be Governors of the U.S. Postal Service; Richard H. Headlee and Roger W. Mehle to be members of the Federal Retirement Thrift Investment Board.

Committee rules mandate that an inquiry be conducted into the experience, the qualifications, the suitability, and the integrity of the nominees for these respective positions. The Committee has received from the nominees financial statements as well as detailed information on their educational background, employment record and professional achievements.

In addition, the nominees have responded in writing to prehearing questions submitted by the Committee concerning the duties and the responsibilities of the positions to which they have been nominated. Copies of the biographical information and prehearing responses will be placed in the record as part of this hearing and they are available upon request. The financial statements are available for inspection by the public in the Committee offices. Committee investigators have also reviewed all of the nominees' biographical and financial information submitted to the Committee.

In addition, Committee staff has examined financial disclosure reports submitted by the Office of Government Ethics [OGE] and the respective agency ethics officer to ensure that no conflicts of interest are present.

The Chairman of the Committee, Senator Glenn, and the Ranking Minority Member, Senator Roth, have reviewed the FBI background investigation report on all of the nominees this morning.

Finally, the nominees have all been interviewed in private by designated Committee staff members prior to this hearing.

Committee rules further require that the nominees be under oath while testifying on all matters relating to their suitability for these offices, including policies and programs which they will pursue while in these positions.

At this time, may I respectfully request that all of the nominees to be heard this morning please rise and let me ask you this question: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

[All responded in the affirmative.]

Senator PRYOR. Thank you. You may be seated.

We are going to move in a little bit of a reverse order this morning.

Let me first ask, do any of our colleagues have any statements they would like to make before we move to the nominations?

Senator TRIBLE. At the appropriate time, Mr. Chairman, I think both of us would like to say a word about the people presented to the Committee today.

Senator PRYOR. Thank you, Senator Tribble.

We will move now to the nomination of Susan E. Alvarado, nominee to be Governor of the U.S. Postal Service.

Senator John Warner, I believe, will introduce our nominee.

TESTIMONY OF HON. JOHN W. WARNER, U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. Thank you, Mr. Chairman.

I shall ask that my statement in full be included in the record.¹

Senator PRYOR. Pardon me. Should Senator Stevens introduce the nominee?

Senator WARNER. No. I will be very brief, because Senator Stevens does have a rather expanded statement, and properly so. I would simply ask that my statement be included in the record.

As we review the credentials of this outstanding nominee, I would only bring to mind that she is the product of a family that has dedicated much of their lives—father, mother and family—to public service. The nominee's sister, as you know, is Director of Action, her father a distinguished military officer, and therefore she carries forward in the tradition of her family.

I have been privileged to know her, as have other Members of the Senate, and I testify unequivocally as to her character and her ability to handle this position.

I thank the Chair, and I thank my colleagues.

Senator PRYOR. Thank you, Senator Warner.

Senator PRYOR. Senator Stevens.

OPENING STATEMENT OF SENATOR STEVENS

Senator STEVENS. Thank you, Mr. Chairman.

I am pleased to be here with my good friend Susan Alvarado. I would like to have my statement printed in the record in full.

¹ See p. 29.

Let me point out to the Chair and members of the Committee that her father, Rick, her mother, Rita, and her sister, Donna, are in the audience today, along with many of her friends.

Susan has an association with my State of Alaska, having attended high school in Anchorage. She came to Washington as a member of my staff. She then moved to the staff of the Senate, really, as an assistant in the Whip office, and then she was the top legislative aide to the Vice President, George Bush. She has worked in the private sector as Vice President of the National Association of Broadcasters, and then as Vice President of Government Relations for E. Bruce Harrison Company.

I think she has a unique qualification to take on this new role, both from her experience here in the Congress, the Executive Branch, and the private sector. Above all, as my statement points out, I am convinced that her background will enable her to improve the Board of Governors of the Postal Service and Congressional relations. As a member of the Board I am certain she will take to it her own personal experience and that will be of great help to the Postal Service and us in the Congress.

I sat down here, Mr. Chairman, because I am going to ask you to let me leave. I must go to a markup in the Appropriations Committee. I have explained that to Susan. I appreciate your courtesy in holding the hearing today for my good friend.

Senator PRYOR. Thank you, Senator Stevens.

[The prepared statements of Senator Stevens follow:]

STATEMENT BY SENATOR TED STEVENS ON THE NOMINATION OF SUSAN ALVARADO TO THE POSTAL SERVICE BOARD OF GOVERNORS

Mr. Chairman, I am very pleased today to be able to introduce my good friend Susan Alvarado to the Governmental Affairs Committee.

I have known Susan for many years. Her association with my home State and Alaska runs deep. She attended high school in Anchorage and worked for 5 years in the Senate as a member of my staff.

In 1980, Susan became the top legislative aide to the new Vice President George Bush. In that position, she played a key role in the massive legislative accomplishments of President Reagan's first term.

Since 1983, Susan has worked in the private sector—first as vice president for congressional liaison for the National Association of Broadcasters and then as vice president for government relations for E. Bruce Harrison Co.

Mr. Chairman, I know that many of my colleagues will agree with me that Susan embodies the best qualities of the new generation of young professionals now beginning to make their mark in Washington. She is a hard-working individual with a first-rate mind.

Susan will bring a unique and important perspective to the deliberations of the Board of Governors. Her insights into the legislative process and congressional oversight will be of great value to her colleagues on the Board. Ultimately, I hope she will help the Postal Service to work more closely with Congress to deal with the extraordinary challenges that face us today.

Thank you, Mr. Chairman.

STATEMENT REGARDING NOMINEES TO THRIFT BOARD

Mr. Chairman, as you know, I authored the Federal Employees' Retirement System Act here on the Senate side. This new retirement system for Federal employees is based on contributions to the Social Security System and also includes a defined benefit similar to the Civil Service Retirement System, as well as a thrift savings plan.

The law established the Federal Retirement Thrift Investment Board to "set policies for the investment and management of the thrift fund." It is composed of five members—three appointed by the President, of whom one is designated chairman, one appointed by the President upon the recommendation of the Speaker of the

House, and one appointed by the President upon the recommendation of the Senate majority leader.

The law also provided for the appointment of an executive director to be the "primary manager of the thrift plan."

All the members of the board and the executive director are considered fiduciaries of the thrift savings fund and as such are required to carry out their duties solely in the interest of the plan participants and beneficiaries.

The thrift plan was originally scheduled to begin accepting employee contributions on January 1, 1987, but for a variety of reasons, including delays in the appointment of thrift board members, the date was moved to April 1, 1987. More than one-third of the Federal work force is now enrolled in this plan, and investments in the thrift savings fund exceed \$1.5 billion.

Mr. Chairman, let me just say that I know there have been some disagreements among members of the board and between members of the board and the executive director regarding the respective roles of each. However, as we proceed with this hearing let's remember that, to the best of my knowledge, the thrift plan has met every milestone set out in the statute.

TESTIMONY OF HON. PAUL S. TRIBLE, JR., U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator TRIBLE. Mr. Chairman, may I say a word of welcome as well to a fellow Virginian and friend.

Senator PRYOR. All of these States are claiming you today, Susan.

Excuse me, Paul.

Senator TRIBLE. The Postal Service has a unique mandate, Mr. Chairman, as you well know. It must be both a public servant responsive to the people and to the Congress and a competitor in the private sector.

We require a strong leadership that is well versed in the economies of the marketplace and sensitive to the challenges of this institution. Susan is particularly well-suited for that task. Her career spans both the public and private sectors, as you have heard this morning. She has a firsthand understanding of the working of this place and she understands the free market process as well.

I am convinced, Mr. Chairman, as are my colleagues who spoke this morning, that Susan will bring to the Board her characteristic energy, enthusiasm, ability and dedication to task. I welcome her and I support her nomination and I would urge my colleagues to do so as well.

TESTIMONY OF SUSAN E. ALVARADO, NOMINEE TO BE GOVERNOR OF THE U.S. POSTAL SERVICE

Senator PRYOR. Susan, I am going to ask you two or three questions.

Is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Ms. ALVARADO. No, sir.

Senator PRYOR. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully or honorably discharging the responsibilities of the office to which you have been nominated?

Ms. ALVARADO. No, sir.

Senator PRYOR. If you are confirmed, do you agree without reservation to appear or to testify before any duly constituted committee of the Congress?

Ms. ALVARADO. Yes, sir, I do.

Senator PRYOR. Finally, many members, or I should say some members, of the present Administration have sensed that we might go toward a system of privatizing the U.S. Postal Service. I wonder what your beliefs are in this area.

Ms. ALVARADO. Well, Mr. Chairman, I have no predisposed position on this issue. I know it is one of great controversy and has been discussed at length both within the Board and outside the Board. I would only say that I am very open to all kinds of discussion about privatization. I think in some areas, such as contracting out, it has been useful, but in others it may not be as beneficial to the Service.

So I would like to reserve judgment on that until after I have had an opportunity to study the issue more closely and perhaps read the Commission report. But at this time I would say that the Postal Service appears to be running rather efficiently and I would not recommend any changes at this time.

Senator PRYOR. Susan, thank you.

Any further questions for the nominee?

OPENING STATEMENT OF SENATOR COHEN

Senator COHEN. I do not have any questions. I do not want my silence to be construed as being in opposition to the nominee. I join with Senator Warner and Senator Stevens and Senator Tribble in expressing my commendation to Ms. Alvarado.

Senator Tribble talked about several things that are required for the position; administrative ability, which she has demonstrated to most of us who have known her. And he also talked about competition. I do not know of a more fierce competitor than the nominee, particularly on the tennis court, which I am sure that she has taken on Senators Warner and Stevens, and perhaps even Tribble.

Senator TRIBBLE. And vanquished us all.

Ms. ALVARADO. Unfortunately, the last time, if I may, Mr. Chairman, Senators Tribble and Warner won.

Senator COHEN. Well, don't raise that because I think that may throw in a question. [Laughter.]

But I want to commend the nominee and support her nomination wholeheartedly.

Senator PRYOR. Let me add to my colleagues in their statements that I know of no one who has more friends in the Senate than Susan. I also strongly feel that those who know her respect her greatly, and we are very glad to have her nomination.

Susan, staff has mentioned something that I should have brought up earlier. Do you have a statement you would like to file for the record?

Ms. ALVARADO. Yes, sir. If I may, I would just like to correct the record with respect to my youngest sibling. There are seven children in our family and she is often overlooked, and she was overlooked today, and that is Tina, who is also in the back of the room.

Senator PRYOR. Very good.

Ms. ALVARADO. And I would like to read a brief statement if I may, Mr. Chairman.

Senator PRYOR. Certainly.

Ms. ALVARADO. Thank you.

I find it deeply moving to be here this morning. It was before this very same Committee over 12 years ago that I began my experience as a young Senate staff assistant, having been given the first assignment to cover a Governmental Affairs Committee hearing on the subject, ironically, of contracting out.

At that time I took a seat alongside other staffers behind the chairs in which you are now seated at the Committee dais and watched and listened with fascination as the Committee process unfolded. It was on that particular day that my interest in Government became permanently fixed. But I can honestly say that I never expected to find myself seated here before you and to be so honored by these circumstances.

Mr. Chairman, and other members of the Committee, I have a tremendous amount of respect for the position to which I have been nominated by President Reagan. The Postal Service is an important part of our history, as it represents the fabric of life that binds Americans not only to our own great Nation but to those across the world.

The Board of Governors of the United States Postal Service is charged with overseeing the management of a large organization to ensure all Americans of their constitutional right to universal service at reasonable rates.

I am honored to be under consideration for a position with such great responsibility and if confirmed will conduct myself in keeping with the highest ethical standard, consistent with the trust placed in me on behalf of all postal patrons.

In conclusion, I would like to thank Senators Warner, Stevens, Tribble, Cohen and yourself, Mr. Chairman, but especially Senator Stevens and President Reagan for nominating me today.

Thank you.

Senator PRYOR. Thank you very much, Susan.

Susan, we thank you for appearing this morning.

Ms. ALVARADO. Thank you, sir.

Senator PRYOR. Our next nominee is Mr. Hugh Hewitt, nominee to be Deputy Director of the Office of Personnel Management.

TESTIMONY OF HUGH HEWITT, NOMINEE TO BE DEPUTY DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT

Senator PRYOR. Mr. Hewitt, do you have any prepared statement that you would like to submit for the record?

Mr. HEWITT. Thank you, Mr. Chairman; just a brief couple of words.

I would like to thank Connie Horner for recommending me to the President for this job, and the President for the honor of nominating me.

I also recognize and thank the staff of the Committee and the Subcommittee, in particular Brian Dettelbach and Ed Gleiman and Susanne Marshall for their patience and assistance extended during the prehearing process; and also to the career and staff at OPM for 22 months of cooperation and I believe progress in some of the many and very difficult issues affecting the Civil Service.

I would be pleased to answer any questions that you have, Mr. Chairman.

Senator PRYOR. Mr. Hewitt, is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. HEWITT. No, sir.

Senator PRYOR. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. HEWITT. No, sir.

Senator PRYOR. If you are confirmed, do you agree without reservation to appear and testify before any duly constituted committee of the Congress?

Mr. HEWITT. Yes.

Senator PRYOR. Mr. Hewitt, there has been an increasing number of complaints coming to this Committee, especially, from the Federal retirees, about the long wait they are subjected to before receiving their first annuity check.

Now, what do you know about this problem and how can we solve it?

Mr. HEWITT. We have been aware of this concern for some time, and in recent months have begun to work very closely with both sides of Congress to develop some additional devices to assure expeditious consideration of retirement claims.

Our studies reveal—and we are not pointing fingers so much as trying to prompt some people into action—that accountability for this problem typically rests with the agency processing the original separation papers. OPM cannot do its job until we receive the file in a completed form and one that can be processed at OPM.

Once we get it, I think our staff does a very good job, even though some claims are very complex, but we are urging agency heads—and Director Horner sent a letter not too long ago to all agency heads—to devote sufficient staff resources and budget resources to their own personnel systems to expeditiously move the paperwork to OPM so that annuitants do not wait long, and unjustly wait, for their first checks to begin to arrive.

Senator PRYOR. Mr. Hewitt, I thank you.

I also have a statement submitted by Senator Dennis DeConcini relative to your appointment. He is strongly supportive of your nomination.¹

I thank you, Mr. Hewitt, for coming.

Mr. HEWITT. Thank you, Mr. Chairman.

Senator PRYOR. Dr. Tirso del Junco has been nominated to be Governor of the U.S. Postal Service.

Congressman Moorhead of California will introduce Dr. Junco.

TESTIMONY OF HON. CARLOS MOORHEAD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MOORHEAD. Mr. Chairman, I have been asked by our Senator from California, Pete Wilson, to introduce my good friend of over

¹ See p. 66.

25 years whom the people of California go to almost every time there is an important job that needs to be filled, because they know he is the kind of a guy who gets the job done.

He has four children; two of them are doctors. He is a native of Cuba but he has lived in the United States since 1949, and been active in almost every civic kind of organization you can think of.

He served in the United States Army, has been a member of the American Federation of Television and Radio Artists, but it is very impressive to know the Government appointments that he has handled so beautifully. He is a member of the Board of Regents of the University of California. He is a presidential appointment delegate to the United States delegation to the 22nd Conference of UNESCO in Paris. He is President of the Board of Medical Examiners for the State of California and has served in that position; Clinical Professor of Surgery, California College of Medicine at Irvine; Chief of Medical Staff, Queen of Angels Hospital in 1979; former Medical Director of St. Vincents Hospital, the finest of institutions, I would tell you, in California, one of the better hospitals that he has worked out of. He really has had an outstanding professional and governmental career.

I have a letter from Senator Pete Wilson that I would like to read to you as a part of my introduction. It is addressed to the Chairman and other members of the Committee:

I want to thank you for allowing an opportunity to present a statement at this hearing on the confirmation of Tirso del Junco to be a member of the Board of Governors of the U.S. Postal Service. I apologize for being unable to personally attend the hearing. I wish to thank Congressman Moorhead for appearing and reading my statement.

It is a distinct pleasure to have this opportunity to endorse Tirso because I have known him for nearly 20 years. I can confidently say that he is an outstanding nominee. President Reagan is to be commended for this selection and I am certain that this Committee and the full Senate will concur with me on the qualifications of this fine individual.

The basis of my opinion about Tirso del Junco is my personal knowledge of him coupled with his impressive professional and personal background. As a review of Tirso's record will indicate, he has consistently demonstrated that a person can combine professional accomplishment with the highest level of integrity. Tirso has done this in such diverse fields as medicine, business and public service.

As a medical doctor, he is a well-respected surgeon. He chairs the Department of Surgery at Santa Monica Hospital. He was founder and Chairman of the Board of Los Angeles National Bank from 1971 until 1982, as well as being a member of the board of several corporations.

Dr. del Junco has achieved recognition as an entrepreneur. Furthermore, he has been able to devote time and energy to the public and to the improvement of this profession. He is past president and a member of the State Board of Medical Examiners, currently a member of the California Air Resources Board and the Board of Regents of the University of California.

Mr. Chairman, I could continue listing the numerous awards Tirso has received. I could go into the fact that he was an Olympic athlete. I could also tell you about Dr. del Junco's service in the U.S. Army after he immigrated from Cuba to America. However, we would be here until tomorrow.

Therefore, I will conclude by saying that Tirso del Junco is a unique and valuable citizen who will bring all of his diverse talents to the Board of Governors of the Postal Service. I can think of no one better qualified to assume such a position.

I thank you for your time and consideration.

Senator PRYOR. Congressman Moorhead, I was looking over the Doctor's biographical information this morning and I do not believe since I have been on this Committee that I have ever read anyone's biography or information about the life of one person that is more

full or more involved in community activities, and I believe he is an extremely unselfish, community-minded individual. And I think the record of this hearing is going to be somewhat thickened by all of the activities that the Doctor has been involved with. It is very, very impressive.

Congressman, I want to thank you.

**TESTIMONY OF TIRSO DEL JUNCO, M.D., NOMINEE TO BE A
GOVERNOR OF THE U.S. POSTAL SERVICE**

Senator PRYOR. I am required to ask these questions, and I will have one more.

Doctor, is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Dr. DEL JUNCO. None, sir.

Senator PRYOR. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Dr. DEL JUNCO. None, sir.

Senator PRYOR. If you are confirmed for this position, do you agree without reservation to appear and testify before any duly constituted committee of the Congress?

Dr. DEL JUNCO. Yes, sir.

Senator PRYOR. Doctor, some Administration officials and others have said that we need to move toward the privatization of the U.S. Postal Service. I wonder if you would give me your views on that issue.

Dr. DEL JUNCO. Well, Senator, this is very complex subject and one that would have great implication for the citizens of this country and it is one that I do not know all the details about it. I can just assure you that I have not committed to any direction. I think it is a lot more than a philosophical issue. I think it is an issue that relates specifically to the quality of services that our people are going to get, and also the cost, and one that is extremely complex.

Therefore, I think it is fair to say that I stand prepared to analyze the issue and to take it under advisement but at this present time I think that the Postal Services are giving a quality type of service to the people of our country at a reasonable cost and I believe that before any changes are made one must be able to project what those changes are going to do down the line to the services that we are offering our people today.

Senator PRYOR. Doctor, especially while Ms. Alvarado is still in the Committee room, I would just like to make a comment—I was not really thinking about doing this but I think that I should—about a contract that has emerged as being somewhat controversial between the Postal Service and Perot Systems.

Night before last on the Senate floor, this particular contract was debated at some length by several members of the Senate, including myself. I finally decided that if this is a good contract, if this particular contract is good for the Postal System, and if ultimately, it is good for the consumer and Postal patrons, if that con-

tract is good now, it would be as good after a hearing, after questions and after some scrutiny.

I would very much like—and I am not asking this now—for you and Ms. Alvarado to look at this contract, as the GAO now is looking into the contract. I would very much like to have your own opinions. No one has alleged any fraud, any dishonesty, any graft, nor has anyone impugned the integrity of the Postmaster General or Mr. Perot. But simply we think we need to study this contract, because it does have long range impacts.

I would very much like and appreciate the comments of both of you during the next several weeks with relationship to this contract.

Dr. DEL JUNCO. I do not know at the present time any details of this contract. I just know there are two phases to it. But I can assure this Committee that I am as interested as you have expressed and I have the same concerns, primarily that the contract is going to ultimately benefit our people.

Senator PRYOR. I would especially like your comments on Phase II of the contract, which may raise the issue of certain proprietary interests going to Perot Systems. I do not know whether it is unique in contracting out, but we are looking at it and we need to look at it.

Once again, if it is a good contract, I think that it will survive a hearing and certainly the General Accounting Office report. I think the comments not only your comments, Doctor, but also those of Ms. Alvarado would be well-received.

Dr. DEL JUNCO. Senator, I do not know the details of Phase II. I do not know even if a final contract has been established in that area. I think it is extremely important to note that one must look at what is the final dollar that is going to be left on the table after everybody else takes his share, and what is ultimately the benefit to the people; and number 2, the type of quality of service that we are going to be offering our people after one implements these recommendations.

I think that the moment is one to be skeptical, like many people are, but at the same time we should be open minded and review the contract.

Senator PRYOR. Thank you, sir.

Any questions?

Senator COHEN. No questions, but I do want to welcome my former colleague, Mr. Moorhead, to the hearing. And to the Doctor, I join in comments about the long list of qualifications the nominee has. It is not often we have a situation when we have to ask what have you done with your life, but we have to ask what haven't you done with your life.

William Carlos Williams was a very famous medical doctor and also a poet, and I had a question as to why a doctor like yourself would want to go into the Postal Service. It is not quite poetry.

Dr. DEL JUNCO. Senator, as the record shows, I have been involved in many areas that one wonders why does a doctor get involved in so many different areas. Perhaps it is my background that makes me very committed to my community, to my country, and to other things in my own personal endeavors such as my pro-

fession, which I have never abandoned in the course of all of these activities.

I hope that, if anything, I am an example to my colleagues who traditionally do not get that involved in community and Government affairs. I think that as a member of the minority community in this country and as an American, it is my obligation—and I think that my children feel the same way—to be involved. In fact I had not been involved to such a degree in the past, perhaps I could not qualify for this position.

Senator COHEN. Congressman Moorhead mentioned you had participated in Olympic sports as well. In what competition were you?

Dr. DEL JUNCO. No. I was in the rowing team with the Cuban rowing team and I won the national races in Cuba 5 consecutive years. Although I was defeated in the eliminations, they still took me to the London Olympic Games.

Senator COHEN. You are a long distance survivor.

Dr. DEL JUNCO. I think that survival is better than runner.

Senator PRYOR. Senator Cohen, I enjoy so much reading the biographical information on these nominees. It is just a fascinating portrayal of commitment and success to civic endeavors.

Reading Susan's, one that struck me, she is listed in Dossier Magazine's list of Washington's 500 movers and shakers. That says an awful lot, Susan. I hope you will move and shake the Postal Service a little bit.

Mr. MOORHEAD. Mr. Chairman, along that line, I would tell you that Susan has a lot of friends in the House, too, including me.

Senator PRYOR. Well, we thank all of you this morning, and you may step aside, Doctor.

Dr. DEL JUNCO. Thank you, Senator.

Senator PRYOR. We now go to Richard Headlee, nominee to membership on the Federal Retirement Thrift Investment Board.

TESTIMONY OF RICHARD H. HEADLEE, NOMINEE TO BE A MEMBER OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Senator PRYOR. Mr. Headlee, first, do you have any statement to file for the record?

Mr. HEADLEE. Mr. Chairman, I am happy to be here; it is a privilege, and I am privileged to serve and willing to serve.

I have submitted all the answers to all the questions and I would be happy to answer any further questions at this time.

Senator PRYOR. Thank you.

Mr. Headlee, is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. HEADLEE. No.

Senator PRYOR. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

—Mr. HEADLEE. No, I do not.

Senator PRYOR. If you are confirmed, do you agree without reservation to appear and testify before any duly constituted committee of the Congress?

Mr. HEADLEE. Yes, I do, Senator.

Senator PRYOR. How are we coming along now with the appointments? What is the total number of members on the Board?

Mr. HEADLEE. We currently have four members serving on the Board. We had five but one of them resigned.

Senator PRYOR. Yes. This is a five-member Board?

Mr. HEADLEE. Yes, sir.

Senator PRYOR. Your nomination was made some time ago and I assume you are anxious to go to work, because that fund is building up, I guess, on a daily basis.

Mr. HEADLEE. Yes, sir. I have been serving for 18 months and we currently have a little over a million members, 1.1, 1.2 million, and we have approximately \$1.8 billion in assets and we are doing very, very well.

Senator PRYOR. Very good.

Senator Cohen.

Senator COHEN. I have no questions.

Senator PRYOR. Mr. Headlee, I think you are going to get off very easy this morning. We appreciate your appearance, and we will try to move this nomination forward as quickly as possible.

Mr. HEADLEE. Thank you kindly.

Senator PRYOR. Thank you, Mr. Headlee.

The next nominee is Roger W. Mehle, nominee to membership on the Federal Retirement Thrift Investment Board.

Senator COHEN. Mr. Chairman, I have a statement.

Senator PRYOR. Good. Before your oral statement, Bill, if I may, I am going to put a statement by Congressman Bill Ford ¹ and a statement of Vince Sombrotto of the National Association of Letter Carriers ² in the record.

Let me, if I may, Senator Cohen, ask the three required questions and then I will turn this over to you.

TESTIMONY OF ROGER W. MEHLE, NOMINEE TO BE A MEMBER OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD ³

Senator PRYOR. Mr. Mehle, is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. MEHLE. No there is not, Senator.

Senator PRYOR. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. MEHLE. No, I do not.

Senator PRYOR. If you are reconfirmed, do you agree without reservation to appear and testify before any duly constituted committee of the Congress?

Mr. MEHLE. Yes, I do.

¹ See p. 117.

² See p. 118.

³ See p. 99 for Mr. Mehle's prepared statement.

Senator PRYOR. Thank you, sir.

Senator Cohen?

Senator COHEN. Thank you, Mr. Chairman.

First, let me express my strong support for the goals, the purpose, and the operation of the Federal Employees Retirement System Act of 1986 a law that comprehensively revised the retirement system for Federal workers. The members of the Thrift Investment Board have a formidable and crucial task, namely to act as fiduciaries for participants of the Federal Employees Retirement System and to establish overall policies for the investments and the administration of the Thrift savings plan.

Over the past few months, as the Chairman knows, I have become concerned over the problems that have arisen in the operation of the five-member, now four-member, Thrift Investment Board. Members of the Board have expressed dissatisfaction with how the Board is being operated under the Chairmanship of Roger Mehle, our nominee today, whose reappointment, as the chairman has indicated, is under consideration.

Three of the Board members have, over the course of several months, expressed concerns that they are not being adequately consulted in decision making, that their recommendations are not being considered or implemented, that the Board lacks overall direction in long-term planning.

At various times during the past year, three members of the Board have expressed specific concerns about the operation of the Board and about their level of involvement, such as their inability to have items scheduled for consideration at Board meetings, that the Executive Director and the staff of the Board does not serve the needs of all five members of the Thrift Investment Board, and that members lack the information necessary to conduct meaningful oversight of how the Executive Director is performing his task as the plan administrator.

These members argue that the conditions and attitudes of the Chairman, Executive Director, and staff have rendered them more of an advisory body rather than a full functioning Board of plan fiduciaries as required by the statute. To date, one member of the Board—as I indicated before—has resigned. Others have expressed strong criticisms of the current state of affairs at the TIB.

I recognize that differences in management style and policies are going to occur in any collegial body, such as the one that has been created by this law, and that different points of view are indeed healthy and necessary if we are going to benefit fully from the investment and management experience and expertise that the five members bring to the Board in a major pension fund.

I also recognize that as part-time members, these persons cannot perform the day-to-day operations of the TIB. What we have to determine, however, is whether the disagreements and factions of the Board have reached a level of jeopardizing the successful planning and operation of the Fund itself and whether these problems will translate into lost opportunities or mediocre performance of the Fund for its participants and beneficiaries. We must also determine whether statutory changes are required to conform to the practice established by the Chairman and Executive Director.

The resignation of one Board member due to dissatisfaction in how the Board is, I think, is a bad sign. Indeed, it leads me to conclude that the Chairman perhaps has not done enough to ensure the full participation of the entire Board as co-equal fiduciaries.

Now, the members of this Committee have spent much time and effort in establishing a workable, solid retirement system for the Federal workers, and in order to ensure the success of this system the Committee has, in my judgment, an obligation to give a fair hearing to the members of the Board who have been critical of how the Board has operated and determine whether the discord that has marked the Board over the past year reflects fundamental problems in the management of the Board under the leadership of the nominee and whether certain policies ought to be changed.

Mr. Robert Monks, who is a member of the Board, was scheduled to testify this morning. He flew back to San Francisco on the "red eye" last evening and as of 9 o'clock this morning called me and said that he was told that he was not to testify before this Committee this morning.

I question on whose authority that direction can come. Neither the White House nor anyone else has the authority to intervene and to insist that a witness appear or not appear. I have a copy of Mr. Monks' testimony, which I am going to ask be submitted for the record.¹

In Mr. Monks' absence, I will direct some questions to the Chairman myself.

Senator PRYOR. Senator Cohen, I have just been advised by staff that we knew nothing about all the controversy about Mr. Monks' appearance. We, I think, had allowed him 5 minutes to make a statement, and the next thing we knew, we were told he was not coming.

Senator COHEN. Well, I just found out this morning that he had received a call and was told that he should not testify; not from the staff, but via the White House. And I would like to have an opportunity to explore that further, but in the meantime perhaps use this opportunity to question Mr. Mehle.

Senator PRYOR. Fine. Senator Stevens has been called to a Defense Appropriations markup, and he asked me to submit a statement in his behalf in support of Mr. Mehle.²

Senator PRYOR. Do you have questions?

Senator COHEN. I do.

Mr. Mehle, what special powers do you have as Chairman of the Thrift Investment Board?

Mr. MEHLE. I have the powers, Senator, that are set forth in the statute which, generally speaking, are to preside over the meetings. There are some special authorities that are conferred on the Chairman; to call special meetings, for example.

Senator COHEN. Well, as I understand it, you have special powers to appoint an advisory committee?

Mr. MEHLE. That is correct.

Senator COHEN. The second special power you have is to call special meetings.

¹ See p. 119.

² See p. 3.

Mr. MEHLE. To call special meetings. Those are two special powers, indeed.

Senator COHEN. And basically you are a co-equal member of the Board. You have equal responsibilities and liabilities as fiduciaries, correct?

Mr. MEHLE. Yes, I do.

Senator COHEN. Now, with respect to special meetings, were you ever requested by Board members to call a special meetings to discuss items that they wished to discuss?

Mr. MEHLE. We talked about calling special meetings from time to time but inasmuch as we meet every month, we found it necessary only to have two special meetings in 1987.

Senator COHEN. Who requested the special meetings? Do you recall?

Mr. MEHLE. I do not. I do not recall that there was any specific request made for a special meeting, although we did have two of them because of the activities that confronted us at the time.

Senator COHEN. Well, I have had occasion to look through the minutes of the Board meetings and it appears that in one of these minutes that you have a request coming from a majority of the Board members for a special meeting, that indeed, even Mr. Headlee, who was here today, indicated—well, let me just read it to you.

This would be the April 27, 1987, meeting: "Mr. Clyne noted that he and Messieurs Headlee, Monks and Davenport had given three dates when they could be available for the special meeting requested by Clyne, Davenport and Monks."

So you had a majority—actually four—of the members.

Mr. MEHLE. I think, Senator, you might be referring to the time as of which three Board members had retained an attorney, and through the attorney had presented some demands, coupled with a request for a special meeting to cover those items. We agreed that what we would do, and indeed what we did do, was cover the items at the next regular meeting, which took place in the month of April. So all of those items were covered at that time.

Senator COHEN. All the items that were requested to be put on the agenda were covered?

Mr. MEHLE. They were; yes.

Senator COHEN. Now, back on November 21, 1986, there was a request made by Mr. Headlee once again suggesting the need for strategic planning. During the course of that meeting I think you indicated that you needed to meet the immediate demands of the Board and that should be something deferred for a couple of months.

Well, the subject was brought up again 1 month later in the December meeting and deferred to a future meeting. Then, again, in January, which would be 2 months later, nothing was discussed about the long-term strategy.

This seemed to be a continuing problem for the Board. There were three members, at least, who persistently advocated the need for long-term planning. And it appears from my reading of the minutes that that was persistently put off by you and the Executive Director.

Could you explain that for me?

Mr. MEHLE. We discussed the timing of a session for long-term planning. November 21, 1986, was the first Board meeting that we had in person and as of that time we had, I think, but one employee. We had advancing down the time schedule the requirement to start the program, to enroll potentially millions of Federal employees, and to create the computer system that would cover their accounts.

I think we all agreed after we began to understand the enormity of the task that confronted us that we needed to tend to these very immediate problems before we could have the luxury of tying up ourselves and our, as of then, one employee, in discussing long-term planning, which we eventually did do.

Senator COHEN. That was in November 1986.

Mr. MEHLE. That is right.

Senator COHEN. Now, I want to refer you to April 27, 1987, 6 months later. The issue is still being raised.

Mr. MEHLE. I think if you were to review the minutes, all of the minutes, carefully, you would find that Mr. Headlee made a suggestion that, instead of having a long-term planning session before we had completed the major milestones of the program, we should defer the meeting until after such time and, indeed, we had it at the time that Mr. Headlee suggested and the other Board members agreed to, which was in May 1988.

Senator COHEN. June 1988?

Mr. MEHLE. That is right.

Senator COHEN. You are talking about April 27 when the issue is being raised, and you suggested that it would be taken up next year?

Mr. MEHLE. It was not my suggestion, Senator. It was Mr. Headlee's suggestion.

Senator COHEN. Did Mr. Headlee suggest that you wait a year to take up the issue of long-term planning?

Mr. MEHLE. Mr. Headlee suggested that what we do, and the other Board members agreed and I did too, is deal with the problems that were confronting us to get the system operational and then after having done that under a very pressing timetable, to talk about questions of openendedness, long range vistas and the like. And as I say, we did do that after we met those milestones.

Senator COHEN. Just about a month or 2 months ago?

Mr. MEHLE. That is right. Actually, that was deferred for a month as well at the request of both Mr. Monks and Mr. Headlee.

Senator COHEN. So you say Mr. Headlee made the recommendation that you simply defer this matter until you had done some other things?

Mr. MEHLE. We discussed it and I think the minutes will show that everybody agreed that it was better put off than held tying up the limited resources of the staff.

Senator COHEN. Did you ever see the memo from John Davenport to Francis Cavanaugh dated March 18, 1987, a very thoughtful memo?

Mr. MEHLE. I think I know the one that you are talking about and I did see it and we did discuss it.

Senator COHEN. Well, did you see Mr. Cavanaugh's response to that memo?

Mr. MEHLE. I did. Yes, I think all the Board members received each piece of correspondence.

Senator COHEN. Did you read Mr. Davenport's response to Mr. Cavanaugh?

Mr. MEHLE. I am sure I did.

Senator COHEN. I will ask to have the exchange of letters placed in the record.¹ Let me read a portion of it, because it is indicative of what was going on with this Board, at least to me. On April 15, 1987, Mr. Davenport wrote: "As you noted in your letter, since both you and the Chairman, Mehle, had failed to review the memorandum prior to the March 23rd Board meeting, it was agreed that we would pursue these issues at our April meeting. I was therefore surprised, disappointed and in fact disturbed by your April 2nd letter in which you arbitrarily dismissed certain of these issues as being unworthy of Board discussion and then totally distort and obfuscate others."

Then, at the bottom of that letter he says: "I am disappointed that you have chosen this method to deal not only with the specific issues in my memorandum but also what is obviously in your mind a misguided effort representing both unwarranted, unneeded interference by a Board member."

Then, on the final page he says: "Obviously, other Board members feel the same; witness member Clyne's 14-page response of April 4th which deals point by point with your letter."

Here you have a letter from one of the Board members——

Mr. MEHLE. This is to Mr. Cavanaugh?

Senator COHEN. This is addressed to Mr. Cavanaugh, the Executive Director. I assume that you chose Mr. Cavanaugh to serve, did you not?

Mr. MEHLE. No, sir.

Senator COHEN. You did not select him?

Mr. MEHLE. The entire Board did.

Senator COHEN. The entire Board of how many members selected Mr. Cavanaugh?

Mr. MEHLE. Three, as of October 2, 1986, the total Board membership at that time.

Senator COHEN. How many of the Board members had met Mr. Cavanaugh?

Mr. MEHLE. Two, as I recall. Mr. Headlee knew him. Actually, I am not sure if he had met him, but he did know him.

Senator COHEN. I understand only you actually had met with Mr. Cavanaugh. About an 18 minute phone conversation took place between three Board members who selected him at that time.

Mr. MEHLE. Well, let me put it to you this way. Each Board member was given the opportunity, any opportunity that he wished, to consider further Mr. Cavanaugh's qualifications. As a matter of fact, I do know that at that time Mr. Clyne called the then Counsel to the President, Peter Wallison, to ask Peter Wallison about Mr. Cavanaugh's qualifications. And I know when Mr. Clyne called back to me he said that he was——

Senator COHEN. Who recommended Mr. Cavanaugh?

¹ The letters referred to start on p. 130.

Mr. MEHLE. Sir?

Senator COHEN. Who recommended Mr. Cavanaugh?

Mr. MEHLE. I suggested that he would be a good candidate.

Senator COHEN. The fact is that you worked with him at the Treasury Department?

Mr. MEHLE. Indeed I did. That is how I knew he was so well qualified.

Senator COHEN. I am just trying to get at the point that it was your recommendation.

Mr. MEHLE. Oh, it was my recommendation.

Senator COHEN. And that there were three members of the Board, not five, at the time which he was selected.

Mr. MEHLE. There were three members of the Board, the total complement.

Senator COHEN. And of those three members, only one, yourself, actually met Mr. Cavanaugh.

Mr. MEHLE. As I say, I do not know whether Mr. Headlee had met him or not but I am sure we could establish that. Mr. Headlee knew him in the past from having, as I recall, reviewed his performance in connection with the award of a Presidential Distinguished Executive Award.

Senator COHEN. In any event, coming back to this letter dated April 15, 1987, a letter addressed to the Executive Director states in rather strong language that a Board member objected to the treatment he had received as a result of, I think, a very thoughtful memo he had prepared.

Not only did he object to it, but then you have a memorandum dated April 4, 1987, from Mr. Clyne, the gentleman who has resigned, rebutting point by point the Executive Director's statement about his role and responsibilities. I ask that this letter be placed in the record.¹

Did you have a chance to review that?

Mr. MEHLE. I did, sir. All the Board members saw all the correspondence and discussed it.

Senator COHEN. Now, let me ask whether you agree or disagree with the statement that planning is the Board's responsibility, implementation is the Executive Director's responsibility?

Mr. MEHLE. I would say that planning and implementation are the responsibilities of all six of the named fiduciaries.

Senator COHEN. Let me ask you, in your judgment are you suggesting that the Executive Director has equal responsibility with the Board members?

Mr. MEHLE. The Executive Director is a statutory co-fiduciary and consequently he does share that kind of responsibility.

Senator COHEN. So he has an equal role—

Mr. MEHLE. Fiduciary responsibility

Senator COHEN [continuing]. In setting policy?

Mr. MEHLE. No. I did not say that.

Senator COHEN. Well, I want to clarify that.

Mr. MEHLE. Policy establishment is statutorily required by the Board.

¹ See p. 153.

Senator COHEN. By the Board?

Mr. MEHLE. Right.

Senator COHEN. The Board sets the policy.

Mr. MEHLE. Indeed.

Senator COHEN. The Executive Director implements the policy? Is that the way it works?

Mr. MEHLE. That is the way it works, yes.

Senator COHEN. That is not the way Mr. Cavanaugh sees it and not the way the minutes reflect your view of his role.

At one point, for example, I believe you indicated that the Board's request to set policy might interfere with the judgment of the Executive Director at any certain time.

Mr. MEHLE. No, sir. I did not do that.

Senator COHEN. Are the minutes incorrect?

Mr. MEHLE. I do not know what you are referring to because I do not have a copy of them before me. I will tell you what I do feel and what I did say.

Senator COHEN. All right. Why don't you tell me and then we will go back and review the portions where it—

Mr. MEHLE. What we discussed at the onset is the complex of policy issues that were going to confront the Board over the coming months and the rapidity with which the statutory milestones were coming up. I suggested that, in order to handle the welter of issues that would confront us, the Executive Director prepare a list of what he saw as the policy issues that the Board would have to decide in the coming months.

The Board members would review that list and if they thought that there were issues that should be added, we would add them. If they thought that some of the issues should be deleted, we would delete them. What I did say is that I thought it would be orderly if the Executive Director framed for us from his operational position what he saw that we would have to deal with.

Senator COHEN. The majority of the Board members disagreed with that decision. The majority of the Board members being three out of the five expressed the position that they are the ones that set the policy, and not that the Executive Director framed the policies for them and let the information go up and they serve as advisors. That is not the way the statute reads.

Mr. MEHLE. We did review the list of issues that the Executive Director gave us. The Board members did ask for some to be added. They were added, and we dealt with that list from month to month. There was never any concern expressed about the Board's not being able to deal with policy issues that it had wanted to deal with.

This was all a question of how to set them down in good order and deal with them.

Senator COHEN. How do you explain the intensity of the Board members' position with respect to Mr. Cavanaugh's articulation of his role and responsibility?

Mr. MEHLE. I think in any new organization, as this is and was, that there are always going to be different points of view that will be expressed. I would like to point out, however, that every single issue that has come to a vote before this Board in the 21 months

since I have been the Chairman has been decided, with one exception with unanimity.

So while there is a great deal of interchange and byplay—which I think should be encouraged—and high feelings, indeed, there was never any indication that as we moved from milestone to milestone that the interchange was not constructive and did not get us to what I think is the very good result we have obtained.

Senator COHEN. Well, Mr. Mehle, I would have to take issue with you in terms of the way in which you have operated. I look at that letter from Mr. Clyne and I come to a different conclusion with respect to what was taking place within the Board itself. It is a very strongly articulated position that they are being relegated to an advisory Board and they resented it. They not only resented it, they felt they had to go out and hire outside counsel in order to protect their own interest; they were not getting the kind of legal advice that they had required.

It seems to me it focuses upon what are the respective roles and responsibilities. Now, you are quoted by one member—and you can choose to dispute that or clarify it if you would—with respect to the Executive Director during the June, 1987, meeting you said that he is for life, analogous to a Federal judge, not subject to legal oversight by the Board, subject only to removal by statute.

Did you ever make the statement that he was the equivalent of a Federal judge?

Mr. MEHLE. What I said, Senator, is he has, effectively, as any Executive Director would, a life tenure. The statute establishes that.

Senator COHEN. Equivalent to a Federal judge? Life tenure?

Mr. MEHLE. A Federal judge has life tenure.

Senator COHEN. Removable only by four out of five members?

Mr. MEHLE. That is right.

Senator COHEN. Was there concern that there was no job description or performance description set for the Executive Director expressed by the members?

Mr. MEHLE. Yes, by Mr. Monks particularly.

Senator COHEN. Well, does that mean there were other members who also expressed it?

Mr. MEHLE. There were other members who expressed it.

Senator COHEN. Mr. Clyne?

Mr. MEHLE. Mr. Clyne expressed it as well.

Senator COHEN. Mr. Davenport.

Mr. MEHLE. Yes.

Senator COHEN. A majority of the members.

Mr. MEHLE. As of that time.

Senator COHEN. And they expressed concern that there were no standards by which they could judge the competence.

Mr. MEHLE. They expressed many such concerns, Senator. The record of minutes of the meetings that we held from month to month will show ebbing and flooding of discussions along the lines of governance of the Board and of the fiduciaries responsibilities. The record is replete with discussion both pro and con of a variety of positions.

Senator COHEN. Well, Mr. Clyne said it was, "unthinkable that the statute does not permit us to define standards by which we judge whether the Executive Director is doing his job."

Mr. Headlee stated that, "the Board sets the goals and communicates them to him as the CEO in his own private capacity and what its expectations are for his performance."

Mr. Davenport said, "cases filed against ERISA trustees for their failure to establish an accountability process."

Mr. Monks, I think you have already indicated, strongly felt there had to be some job description standards set by which they could measure that performance. And you had three out of the five members very strongly supporting that.

Mr. MEHLE. We also had the General Counsel of the agency, Senator, pointing out that the statute establishes the Executive Director's role and the statute establishes the role of the Board members and there is a very delicate balance statutorily established between those two.

Now, we do think, of course—and we have behaved accordingly—that the Executive Director's standards of performance are strongly related to the attainment of the objectives of the organization.

Senator COHEN. Are those only spelled out by statute? The Board cannot insist upon setting certain performance standards?

Mr. MEHLE. I do not think the Board can insist on a set of standards which is in conflict with the statute, the scheme of the statute.

Senator COHEN. Can they insist upon standards which are different from in any way?

Mr. MEHLE. The statute? I do not think they can.

Senator COHEN. Your General Counsel has also said—I think the record should indicate this—that the Government Affairs Committee made a mistake when it wrote that the Board will set the terms and conditions of the service of the Executive Director. Is that the position you take as well?

Mr. MEHLE. Well, I think that refers to a change in the statute when it was in Committee. That particular section of the statute—which was, I think, part of the original Senate bill—that talked about setting the terms and conditions of employment was removed and thus did not appear in the final version that was enacted. The General Counsel of the agency noted that that particular excision was with some significance.

Senator COHEN. Should Board members be allowed to play a part in the preparation of bylaws for the Thrift Investment Board?

Mr. MEHLE. The Board is not a corporation but is instead a Federal Agency and, as such, it publishes and has published regulations which the Board members and the Executive Director are all familiar with.

Senator COHEN. That is not what I asked you. I asked you whether or not the Board members should be allowed to participate.

Mr. MEHLE. It does not have bylaws as such, Senator. That is what I was trying to reach. Bylaws would be for a corporate organization.

Senator COHEN. What is the equivalent?

Mr. MEHLE. Sir?

Senator COHEN. What is the equivalent?

Mr. MEHLE. Regulations.

Senator COHEN. And who are those proposed by?

Mr. MEHLE. They are promulgated by the Executive Director. They are published in accordance with the Administrative Procedure Act and all of the Board members have an opportunity to function with respect to them.

Senator COHEN. So the Board members then have no role to participate in the formulation or promulgation of the rules under which they are going function?

Mr. MEHLE. They do participate.

Senator COHEN. Well, in other words, the Executive Director and the staff are the ones who prepare it?

Mr. MEHLE. They are the ones who prepare them.

Senator COHEN. What if the Board members say, wait a minute, we are the ones who are charged with this responsibility for managing this operation?

Mr. MEHLE. Well, I think they are free to do that, but they never have done it.

Senator COHEN. Could I just finish?

Mr. MEHLE. Please.

Senator COHEN. All right. The Board members say, "We would like to have a role in the preparation and promulgation of these regulations under which we are going to function."

Mr. MEHLE. Yes.

Senator COHEN. Did they make such a request?

Mr. MEHLE. I do not know that any specific request of that kind was made that was not accommodated.

Senator COHEN. That was not accommodated?

Mr. MEHLE. That was not or has not been accommodated. Board members have a completely free interchange with the Executive Director.

Senator COHEN. As a matter of fact, I believe Mr. Monks made a specific request to prepare the so-called promulgations of regulations. Not only was that denied, he was not even allowed access to the staff that prepared them in terms of working out—

Mr. MEHLE. I am not familiar with that, Senator.

Senator COHEN. You are not familiar with that?

Mr. MEHLE. No, I am not.

Senator COHEN. That was not brought to your attention?

Mr. MEHLE. I do not know precisely what you are referring to, but Mr. Monks has had an opportunity, which he has availed himself of, over the last many months to interchange with all of the Board members and the Executive Director. The fact that Mr. Monks' views have not carried in many cases I think is only an example of the fact that they have not been thought to be, shall we say, controlling.

Senator COHEN. Well, you have had one member resign by virtue of the way in which the Board—

Mr. MEHLE. I do not know that that is true, Senator. I know that that has been said.

Senator COHEN. Why do you think he resigned?

Mr. MEHLE. I saw Mr. Clyne's resignation letter. Mr. Clyne sent me a letter and he sent the President a letter. And in his letter to the President, he said that he was resigning because the press of

commitments of his business would not permit him to devote time to the affairs of the agency.

Senator COHEN. Did you take it upon yourself to find out whether or not it was anything more than simply the press of business?

Mr. MEHLE. I took Mr. Monks' letter to the President at face value.

Senator COHEN. Not Mr. Monks.

Mr. MEHLE. Mr. Clyne, yes.

Senator COHEN. Well, I have other letters here that I will share with the Chairman, in terms of perhaps the reasons for the resignation. But we will pass on to that.

It was not just Mr. Monks. You have one member who has resigned and you have a record replete with a majority raising substantive issues which appear to be persistently rejected.

Mr. MEHLE. Senator, all I can tell you is that in every meeting that we have had, we have had a great deal of discussion which has always been interesting, with varied points of view expressed. At the end of the meetings, which have oftentimes been very lengthy and all of which, as you know, are on the record, when we have voted on issues, the votes, as I have said, with one exception over the last 21 months, have all been unanimous.

So the fact that we have had these colloquies and controversial discussions I think is not the point. I think the point is the outcome of the Agency's governance, the outcome of its activities. The Agency is in excellent shape today and I think it serves the constituency very well.

Senator COHEN. Mr. Mehle, if the Board adopts a policy and that conflicts with what the Executive Director believes ought to be done, who controls?

Mr. MEHLE. It is a question that I think I cannot really respond to unless I could have a precise hypothetical. I would say if it did appear to the Executive Director that the policy that the Board adopted was violative of fiduciary responsibilities, in law the Executive Director and every other fiduciary would have an obligation, as the statute prescribes, to take reasonable steps to correct the breach of fiduciary responsibility.

Senator COHEN. That is not what I asked you. I asked you if the Board adopts a policy which the Executive Director believes is wrong or——

Mr. MEHLE. Wrong, a breach of fiduciary responsibility, wrong?

Senator COHEN. Or simply——

Mr. MEHLE. Well, it makes a difference. That is why I am trying to be precise.

Senator COHEN. Well, let's go through it. He believes it to be the wrong policy, just wrong.

Mr. MEHLE. But not a breach of fiduciary responsibility?

Senator COHEN. Right. Who controls?

Mr. MEHLE. In that case, the Board's policy determination would control.

Senator COHEN. Now, he assumes or concludes that the Board's policy violates their fiduciary responsibilities as well as his own.

Mr. MEHLE. Right.

Senator COHEN. Who controls?

Mr. MEHLE. In that case, he would have to take the steps prescribed by statute to prevent his being held jointly liable.

Senator COHEN. What are those steps?

Mr. MEHLE. Well, it depends on the circumstance, but the statute says that he must take the steps reasonable under the circumstance to deal with the breach.

Senator COHEN. I am not sure I understand what that means.

Mr. MEHLE. Well, you cannot really deal with it well unless you have a precise example. Let me give an example.

Let us say that the Board determined that there was a particular vendor that should be selected to manage the assets of Federal employees' investments and that it was known that this vendor had a close business connection with, let's say, two of the Board members. In fact, two of the Board members might clearly have business dealings which would be advantaged by the selection of that asset manager. The other three Board members acquiesce in the selection of that particular asset manager and the Executive Director points that it would be inappropriate as a conflict of interest for that asset manager to be employed. The Board members do not listen. They are not concerned and the Executive Director gets a vote of five to nothing to employ that asset manager.

Under those circumstances, it would be likely that he would be in breach of his fiduciary responsibility if he did not bring it to the attention of somebody who could do something about it, apart from the Board members, to correct the situation.

Senator COHEN. Well, that still does not resolve the issue as to whether or not he can do something to protect himself in terms of his own liability and a breach of his fiduciary responsibility. It does not mean that he has the power to overrule a decision reached by a majority of the Board, does it?

Mr. MEHLE. It is not a question of overruling so much as it is a question of permitting the result of the breach of fiduciary responsibility. I think the statute recognized that there could be circumstances in which one Board member, or even all of them, would decide collectively to do something that was a breach of fiduciary responsibility and somebody would have to blow the whistle.

I might add that in this respect we have never had any such disagreements. We have never had any policy determinations that we have adopted that the Executive Director has failed to carry out.

Senator COHEN. But disagreement has centered around exactly who has the right to set policy and as I read——

Mr. MEHLE. It is clear that the Board does, and the Board has.

Senator COHEN. The Board does——

Mr. MEHLE. And has.

Senator COHEN [continuing]. But there has been a disagreement in terms of allowing the Executive Director to frame issues that the Board will then decide.

Mr. MEHLE. Well, it is like proposing an agenda. It is not that the agenda is the one that you must follow. It is one that you are given to help you determine what you are supposed to be dealing with.

Senator COHEN. Let's suppose the Board wants to make a policy decision to not have the Executive Director do that, or frame the issues for them.

Mr. MEHLE. Then it could. If it said, we do not want to hear from the Executive Director, we do not want to hear from the staff at all, I think it could do that. I think it would not be particularly wise, but it could.

Senator COHEN. Well, I take you back to the letter from Shannon Clyne, page 3, "It may help to relieve Frank's mind and generally clarify responsibilities to revisit the statute. It the Board's responsibility to, quote, 'develop' established policies for the Administration of Subchapter 3 for the management of investments in a thrift savings plan; it is Frank's responsibility to carry out those policies and any other directions the Board might give under the statute."

Mr. MEHLE. Well, I certainly agree.

Senator COHEN. And I quote from Mr. Clyne's letter, bearing on the responsibility that authorizes Frank to hire staff. Staff is responsible to Frank and Frank is responsible to the Board.

Mr. MEHLE. Yes.

Senator COHEN. That is very clear.

Mr. MEHLE. I agree with all those things.

Senator COHEN. Well, why was it such an item of contention?

Mr. MEHLE. I think, as I say, Senator, you are dealing with people who have strong points of view and come from different—

Senator COHEN. A majority.

Mr. MEHLE. Pardon me?

Senator COHEN. A majority have strong points of view.

Mr. MEHLE. Everybody has a strong point of view. Everybody does.

Senator COHEN. Well, three out of five constitutes a majority and shouldn't the majority control?

Mr. MEHLE. The majority did control, does control, Senator. As I say, every single issue that has ever been put to a vote before this group has been unanimously decided with one exception. That is my point. The majority has controlled. The record will show that, so I do not really understand the notions about the majority.

Senator COHEN. Well, it seems to me that it has been a long battle to establish that principle.

Mr. MEHLE. No, sir. It has been that way from the very beginning, from day one.

Senator COHEN. What has been that way?

Mr. MEHLE. The majority has controlled. Now, you are quite right when you observe that there have been a lot of discussions.

Senator COHEN. If it has been that way from day one, you would not have the minutes of the meeting reflect the dissension and discord that lasted for 6 months, 8 months, 10 months, even a year.

Mr. MEHLE. I, unfortunately, cannot control and do not even try to control the views that are expressed by all of the members and these bodies, I think, especially when they get started, are always going to reflect high feelings. But the outcome, as I say, in votes, in the procedure and the resolutions and the policies that were adopted, over 21 months have all been unanimous with one exception.

Senator COHEN. Was that the outside counsel?

Mr. MEHLE. No.

Senator COHEN. What is the one exception?

Mr. MEHLE. The one exception was the approval of the budget for fiscal year 1987, and that passed four to one.

Senator COHEN. Have you evaluated whether the National Finance Center is a cost-effective means of record keeping for the plan?

Mr. MEHLE. Yes, we have. We have done it and we have also asked an outside consultant to do so as well.

Senator COHEN. When was that outside consultant hired?

Mr. MEHLE. Let's see. That was Price Waterhouse and that was done, as I recall, in mid-1987. I must say that the National Finance Center has done, I think, a superb job and all the Board members joined me in that as recently as May when we had our second to the last Board meeting. The National Finance Center gave an accounting of its stewardship then, as it has done periodically since it was retained.

Senator COHEN. Did Mr. Clyne ever propose certain resolutions that you refused to allow to be presented back in February of this year?

Mr. MEHLE. No. As a matter of fact, I asked Mr. Clyne, who had circulated some resolutions, to present them and discuss them with us and he decided he would not do so. I think one will find that reflected clearly in the transcript of the meeting.

Senator COHEN. Well, Mr. Mehle, I intend to get all of the minutes of the Board meetings. I have a number here, and I think it would be important for the Committee to have those minutes available to show the kind of conflict that has developed.

Perhaps it has been clarified by this time, but it seems to me that it is persistent. I will try to reconcile Mr. Clyne's stated reasons for leaving with the other statements that he has made.

But I think I have had enough questions for the time being, Mr. Chairman, and I will continue to review what has transpired on the Board.

Senator PRYOR. Thank you, Senator Cohen.

In order to provide a little balance for the record this morning, I have submitted Congressman Ford's statement. And let me state for the record that Congressman Ford appears—and this was his original legislation, I think, setting up this Board—and he does express satisfaction with the way the Board is being operated and the safety of the funds administered by the Board.

Also, I have submitted a letter from Mr. Vince Sombrotto. I believe that Mr. Sombrotto is the Chairman of the Employee Thrift Advisory Council, and he does state in his letter his satisfaction with the management and running of the Board. And, finally, the letter of Senator Stevens—I believe Senator Stevens also expresses confidence and satisfaction in Mr. Mehle and the way the Board is being operated at this time.

We are waiting for another nominee, Senator Cohen, who happens to be from the State of Arkansas.

Senator COHEN. Very controversial.

Senator PRYOR. Very controversial, and he will add an interesting characteristic to the Board. He is a very fine person, and I hope that nomination can be forthcoming soon.

Mr. Mehle, we thank you for appearing this morning.

I do also have—and it is voluminous, I wish I had a simple summary of this—but in view of some of the questions that have been raised about the reimbursement of Board members' legal expenses,

last fall, Senator Cohen, I asked the Congressional Research Service for a study and the opinion of the American Law Division on the legality of reimbursement of Board members' legal expenses. I would like to submit for the record the entirety of the CRS American Law Division, interpretation of the law and their final conclusions.¹

Senator PRYOR. The meeting is adjourned. We thank you again for your attendance.

[Whereupon, at 11:20 a.m., the Committee adjourned subject to the call of the Chair.]

¹ See p. 169.



APPENDIX

John W. Warner
June 24, 1988

Senate Committee on Governmental Affairs
Confirmation Hearing for Susan Alvarado of Virginia
To Serve As Member, Board of Governors
United States Postal Service

Mr. Chairman, I am pleased to come before you today to introduce Susan Alvarado of Alexandria, Virginia. A valued constituent, Ms. Alvarado has been appointed by the President to become a member of the Board of Governors of the United States Postal Service.

Presently serving as Vice President for Government Relations for the E. Bruce Harrison Company of Washington, D.C., Ms. Alvarado will bring to the Board a wealth of managerial experience.

She is an accomplished former staff member of our own institution, having served from 1975 to 1980 in an increasingly senior capacity for the present ranking member of the Senate Governmental Affairs Subcommittee on Federal Services, Post Office and Civil Service, Senator Ted Stevens. Indeed, it is my understanding that during the period in which Senator Stevens served as Assistant Republican Leader, Ms. Alvarado acted as his Legislative Assistant, the first woman to achieve senior staff status for a member of the Senate leadership.

From 1981 to 1983, Ms. Alvarado then joined the staff of Vice President George Bush, rising to a principal role as Assistant to the Vice President for Legislative Affairs. In that capacity, Ms. Alvarado acted as senior Congressional liaison for the Vice President, handling with great competence the myriad of responsibilities and duties required by that office.

In 1983, Ms. Alvarado departed government service to begin her career as a private sector executive, first as a Vice President with the National Association of Broadcasters, and since 1987, in her present capacity as Vice President with the E. Bruce Harrison Company.

Mr. Chairman, with aspects of both a government agency and a private corporation, the Postal Service requires special leadership. I believe that Susan Alvarado meets that requirement. Her experience in the legislative and executive branches of government, together with the expert managerial skills she has gained in the private sector, combine to make her an outstanding candidate.

I strongly recommend Susan Alvarado's appointment to the United States Postal Service Board of Governors.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEE
SUSAN E. ALVARADO, GOVERNOR, UNITED STATES POSTAL SERVICE

A. BIOGRAPHICAL INFORMATION

1. Name: Susan Elisa Alvarado
2. Position to which nominated: Governor, United States
Postal Service
3. Date of nomination: March 24, 1988
4. Address: Residence: 5814 Wyomissing Court
Alexandria, VA 22303

Office: E. Bruce Harrison Company, Inc.
1440 New York Avenue, N.W.
Suite 300
Washington, DC 20005
5. Date and place of birth: May 11, 1954 Alexandria, VA
6. Marital status: Single
7. Names and ages of children: None
8. Education: Anchorage, AK : Arcturus Junior High School
1968-69

Anchorage, AK : A.J. Dimond High School
1969-70

Alexandria, VA: : St. Mary's Academy
1970-72

Columbus, OH : Ohio State University
1972-75
B.A., Political Science
9. Employment record: Washington, DC: Staff Assistant to
1975-76 U.S. Senator Ted Stevens

1976-80 Legislative Assistant to
U.S. Senator Ted Stevens
Assistant Minority Leader

1980-81 Legislative Assistant to
Vice President George Bush

1981-83 Assistant to the Vice
President for Legislative
Affairs

1983-86 Vice President
Government Relations
Nat'l Assoc of Broadcasters

1987 to present

Vice President
Government Relations
E. Bruce Harrison Co, Inc.

10. Government experience: None.

11. Business relationships:

Representative: National Association of Broadcasters
Lennox Industries, Inc.
Joseph E. Seagram and Sons, Inc.
National Environmental Development Association:
Clean Air Project (NEDA-CAP)
National Environmental Development Association:
Groundwater (NEDA-GRND)
Smokeless Tobacco Council
UST

12. Memberships: Pi Beta Phi Alumnae Association
Ohio State University Alumnae Association
American Women in Radio and Television
Belle Haven Country Club
Capitol Hill Club (expired)
Skyline Racquet and Health Club (expired)
Mt. Vernon Racquet Club (expired)
St. Mary's Parish, Alexandria, VA
Lombardi Charity Golf and Tennis Committee

13. Political affiliations and activities:

(a) none

(b) services rendered to the Republican Party:

- served on steering committees for individuals whose names are on record to raise funds for re-election.
- presently serving on national steering committee and as Virginia co-chair in finance for the George Bush for President Committee.

services rendered to the Democratic Party:

- raised funds and attended fundraisers for individuals whose names are on committee record

(c) itemized PERSONAL campaign contributions are as follows:

- State Senator Joseph V. Gartlan, Jr., D-VA, (\$100)
- Fund for America's Future (\$1000)
- George Bush for President Committee (\$1000)
- Women's Campaign Fund (\$300)
- Congressman Mike Synar (D-OK) (\$100)
- Senator John Warner Annual Atoka Barbecue (\$150)

14. Honors and Awards:

Ohio State University Alumnae Association's William Oxley
Thompson Award for career achievement prior to the age of 35

Ohio State University President's 300th Commencement Award
for outstanding accomplishments both past and future

Outstanding Young Women of America

Who's Who in America's High Schools

Dossier Magazine's List of Washington's 500 movers and shakers
in lobbyist category

15. Published writings: None.

16. Speeches: None.

17. Selection:

- (a) Do you know why you were chosen for this nomination by the President? I believe I was chosen for this nomination due to the recommendation of Senator Ted Stevens, based upon my qualifications for service on the Board.
- (b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment? My background as a former senior staff member in both the legislative and executive branches of government, as well as my private sector experience in the telecommunications field, I believe, affirmatively qualifies me for this particular appointment.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

No, it is my understanding that my nomination is to a part-time position that does not require me to discontinue my full-time occupation as a Vice President with E. Bruce Harrison Co, Inc.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

Yes, as stated above it is my understanding that if I am confirmed to this position it will not require me to step down from my present, full-time job.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

Again, it is my understanding that this position to which I am nominated is a part-time appointment that does not require me to change my present full-time job status.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

Again, as stated above I do not believe this question applies to the position for which I am nominated. In any event, I have made no such commitments.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

If confirmed, I do expect to serve out my full term.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

My financial arrangement at E. Bruce Harrison Co, Inc., is very simple and straightforward. I am a salaried employee with no built-in contractual incentive for new business development. As stated in my responses to the pre-hearing questions of the Governmental Affairs Committee, I plan to continue my dealings with my present clients. However, again as stated, I fully intend to closely monitor my work for present clients to ensure no potential conflict of interest or appearance of conflict of

interest, and be especially vigilant to any potential conflict of interest or appearance of conflict of interest for any new client who may be interested in retaining my services or that of my firm.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position for which you have been nominated.

There are none.

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a conflict of interest in the position to which you have been nominated.

There have been none.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

As a member of the staff of both a United States Senator and the Vice President, I have obviously been involved both directly and indirectly in the legislative and executive processes.

Since leaving government for the private sector, I have been hired principally as a lobbyist for just those purposes outlined above--that is to influence the legislative process.

As stated above, I currently represent the interests of the National Association of Broadcasters in all telecommunications matters in which they have a stated interest. I also continue to represent the interests of UST, a company with smokeless tobacco products, wineries and cigar products. I also work for Lennox Industries, Inc., a refrigerant and coolant company, on matters of a general business nature. In addition to these clients, I also lobby on behalf of the National Environmental Development Association for changes in clean air and groundwater legislation. My other clients have me working on public relations matters, and not direct lobbying.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or agreements).

If a potential conflict of interest arises, I will take immediate action by refusing to take on that particular client. In fact, I will submit even the appearance of a conflict of interest to the

Postal Service's general counsel for a ruling and live by that ruling.

In the past, I have never represented a client on postal matters, nor has my firm, and neither I nor my firm will do so during the term of my nomination, should I be confirmed.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes, I not only agree but will encourage it as stated in an earlier response.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

Yes, last summer I was arrested for driving while intoxicated (DWI). Since it was a first offense, I was registered in the diversion program and, upon successful completion of the required course, the charges were dismissed and are listed as "nolo prosequi."

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

No.

4. Have you ever been convicted (including pleas of guilty or "nolo contendere") of any criminal violation other than a minor traffic offense?

No.

5. Please advise the Committee of any additional information, favorable, or unfavorable, which you feel should be considered in connection with your nomination.

I feel the Committee should know that my sister, Donna Maria Alvarado, is presently serving the government as Director of ACTION. I offer this only as pertinent information, neither favorably or unfavorably, in the event this poses any conflict. I know of none, however.

E. FINANCIAL DATA

(information retained in Committee file)

AFFIDAVIT

Susan E. Alvarado being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Subscribed and sworn before me this 27th day of May, 19 88 Susan E. Alvarado

Rochelle S. Morano

Notary Public

My Commission Expires July 14, 1988

RESPONSES TO PRE-HEARING QUESTIONS FOR NOMINEE
SUSAN E. ALVARADO
GOVERNOR, UNITED STATES POSTAL SERVICE

I. NOMINATION PROCESS AND POTENTIAL CONFLICTS

Question 1

Were any conditions, expressed or implied, attached to your nomination to be a Governor of the United States Postal Service?

No.

Question 2

What commitments have you made with respect to the policies and programs you will attempt to implement as a Member of the Board of Governors?

None.

Question 3

Are there any issues involving the Postal Service from which you may have to disqualify yourself? If so, please explain.

I am not aware of any such issues.

I am committed to maintaining a high ethical standard in my conduct and have studied the Board of Governors' Code of Ethics. Much of my professional career has been spent in various positions in the federal government. My experience in government does not conflict in any way with service on the Board of Governors.

In my work in the private sector, I have advised and represented a national trade association and several private businesses. Although virtually all trade associations and private businesses are mailers and thus have an interest in the postal system, neither my firm nor I have ever been retained on a postal matter.

If I am confirmed, I intend to monitor my business activities carefully to avoid any conflict of interest or any appearance of a conflict of interest.

Responses to pre-hearing questions
for Susan E. Alvarado
Page 2

Question 4

Did you actively seek this nomination? Explain.

No, not in any way. Senator Ted Stevens believed that I could make a substantial contribution to the Board of Governors. He discussed the matter with me and then submitted my name to the Administration for consideration.

Question 5

Why do you feel you are qualified to be a member of the Board of Governors and what contribution do you feel you can make to the Postal Service as a member of the Board?

My experience in government, particularly in the legislative process, and my knowledge of new developments in telecommunications would be of great value to the Board of Governors as it moves to meet the challenges currently facing the Postal Service.

II. RESPONSIBILITIES OF THE BOARD OF GOVERNORS

Question 1

What is your view of the role of the Board of Governors of the Postal Service? What do you believe are its most important functions and responsibilities?

The Board of Governors functions much like the board of directors of a major corporation, setting major goals and policies and overseeing the management of the Postal Service. Unlike the board of a private corporation, however, the Board of Governors represents the interests not of a group of shareholders but of the general public, which depends on the Postal Service to provide an essential service at reasonable rates.

In my opinion, one of the most important functions of the Board of Governors is to make sure that the Postal Service anticipates and responds in a timely and appropriate manner to changes in the needs of the public and in telecommunications and transportation technology.

Responses to pre-hearing questions
for Susan E. Alvarado
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Question 2

How do you view the relationship of the Board of Governors to the Postal Service and, specifically, to the Postmaster General.

The Board of Governors should work cooperatively with the Postmaster General and his management team to implement the policies established by Congress and the Board itself. The Board should not put itself into the position of micromanaging the implementation of policies.

At the same time, like the governing boards of other large organizations, the Board of Governors bears ultimate responsibility for the activities of the Postal Service. The Board cannot accept blindly the reports and recommendations of the Postmaster General and his staff. It must decide for itself whether established policies are being followed. If not, it is the Board's duty to ensure that the Postmaster General takes the necessary corrective action.

Question 3

How do you view the relationship and responsibilities of the Board of Governors to the President, the public, and the Congress?

The Board of Governors has an obligation to the public to ensure that the Postal Service provides universal mail service in an efficient manner at reasonable rates. In order to fulfill this obligation, the Board must make sure that the Postal Service solicits the views of the public on service issues.

The Board of Governors is ultimately accountable to the President, who nominates members of the Board, and the Congress, which determines basic national postal policies. The Board of Governors is obligated to ensure that the policies established by Congress in the Postal Reorganization Act of 1970 and other legislation are implemented.

Responses to pre-hearing questions
for Susan E. Alvarado
Page 4

Question 4

How do you view the respective roles and the relationship between the Board of Governors and the Postal Rate Commission?

The Board of Governors deals with the overall direction and management of the Postal Service. The Postal Rate Commission has a more specialized mission -- determining, subject to the Board's review, how to structure postal rates so that revenue sufficient to operate the Postal Service is generated and each class of service is treated fairly. The Board and the Commission must work as partners to ensure the financial integrity and stability of the Postal Service.

III. POSTAL REORGANIZATION

Question 1

Various proposals have been made to increase the accountability of the Postal Service to the Congress including Presidential appointment of the Postmaster General or the Chairman of the Board of Governors. How do you feel about these proposals?

It is difficult to answer this question without having the specifics of these proposals before me. Nevertheless, I believe that the depoliticization of the office of the Postmaster General has been good for the Postal Service. I do not feel that Congress needs to provide for Presidential appointment of that post or the office of Chairman of the Board of Governors to ensure the accountability of the Postal Service. I, for one, do not question in any way the need for the Board of Governors to be sensitive and responsive to Congressional concerns about postal policies.

Responses to pre-hearing questions
for Susan E. Alvarado
Page 5

Question 2

The Postal Rate Commission is a unique regulatory agency in that it does not have final decision-making responsibility with respect to most matters brought before it. As you know, this responsibility rests with the Board of Governors of the Postal Service. Do you believe that this arrangement should be maintained. If so, why?

I support the existing arrangement under which the Postal Rate Commission evaluates the Postal Service's rate proposals in a quasi-judicial process subject to a final review by the Board of Governors. The Board, which has a broader mission than the Commission and is responsible for all aspects of mail service not just the cost to mailers, should retain the ability to modify the Commission's rate recommendations so long as it acts in accordance with the statutory requirement that each class of mail pays its own way.

Question 3

Would you recommend any changes in the role and responsibilities of either the Postal Rate Commission or the Board of Governors?

It would not only be premature but presumptuous for me to recommend changes in the role and responsibilities of either the Board of Governors or the Postal Rate Commission at this time. I would need first hand experience with the current system before I could comment on such matters.

IV. POSTAL SERVICE OPERATIONS

Question 1

To what extent do you view the Postal Service as a public service appropriately financed out of the United States Treasury?

The Postal Service provides an essential public service, but I believe that in accordance with the intent of the Postal Reorganization Act of 1970, it should be financially self-sufficient to the maximum extent possible.

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V. RELATIONS WITH CONGRESS

Question 1

What suggestions do you have for strengthening the relationship of the Board of Governors to the Congress? Do you believe that this is necessary?

Congress is charged under the Constitution with the task of establishing "post offices and post roads." Much of the public still believes that Congress exercises daily operational control of the Postal Service. These two facts require the Board of Governors to be sensitive and responsive to the concerns of Congress. I believe that the Board should be more aware of the impact of its actions on Congress, and I would welcome the opportunity to help bring the Board and the Congress closer together.

Question 2

Do you agree without reservation to respond to any reasonable request or summons to appear and testify before any duly constituted Committee of the Congress?

Yes.

(EBH):BH1160LAZ

JOHN GLENN, OHIO, CHAIRMAN
 LIGHTON CHILES, FLORIDA
 SAM NUNN, GEORGIA
 CARL LEVIN, MICHIGAN
 JIM BASSER, TENNESSEE
 DAVID PRYOR, ARKANSAS
 GEORGE J. MITCHELL, MAINE
 JEFF BRIDGEMAN, NEW MEXICO
 LEONARD WEEB, STAFF DIRECTOR
 JO ANNE BARNHART, SENIORITY STAFF DIRECTOR

WILLIAM V. ROYCE, JR., DELAWARE
 TED STEVENS, ALASKA
 WILLIAM S. COHEN, MAINE
 WARREN E. RUSSMAN
 NEW HAMPSHIRE
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United States Senate

COMMITTEE ON GOVERNMENTAL AFFAIRS

SUBCOMMITTEE ON
FEDERAL SERVICE, POST OFFICE, AND
CIVIL SERVICE

WASHINGTON, DC 20510-6250

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March 25, 1988

The Honorable John Glenn, Chairman
 Committee on Governmental Affairs
 SD 340 Senate Office Building
 Washington, D.C. 20510

Dear John:

As you may be aware, a former member of my staff, Susan Alvarado, has just been nominated by the President to serve on the Board of Governors of the U.S. Postal Service.

Although Susan was born in Virginia and now resides there, she spent many of her younger years in Alaska. She graduated from high school in Anchorage, Alaska, and then she went on to graduate from Ohio State University.

You may well remember Susan. She was my "Floor Person" during the days when I was Assistant Minority Leader. I believe she is an outstanding nominee and will give to the Board a congressional perspective which it could use, but has never had. I would hope that an early hearing date could be set for her confirmation. This is particularly important since there are two vacancies on the Board. In addition, one member has suffered a stroke and is not well, leaving eight out of the eleven members to carry on the responsibilities of the U.S. Postal Service. Two of those members, the Postmaster General and the Deputy Postmaster, are not eligible to vote on certain issues, thus, should one more member be absent for any reason the Board would have a difficult time establishing a quorum to carry out its mission.

I hope the normal investigations and hearing process can be completed as soon as possible.

With best wishes,

Cordially,



TED STEVENS

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United States Senate

COMMITTEE ON SMALL BUSINESS

WASHINGTON, DC 20510-8350

April 27, 1988

The Honorable John Glenn
 Chairman
 Senate Committee on Governmental Affairs
 SD-340
 Washington, D.C. 20510

Dear Senator Glenn:

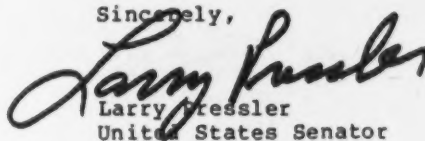
I am writing on behalf of Ms. Susan Alvarado regarding her recent appointment by the President to serve on the Board of Governors of the U.S. Postal Service.

As you are aware, Ms. Alvarado worked for Senator Ted Stevens as a floor assistant in his Whip office, and later served on the staff of Vice President Bush. Ms. Alvarado is an outstanding individual and has been a tremendous help to all of us in the Senate during her tenure in the leadership offices.

Anything that can be done to expedite her nomination in the Senate Governmental Affairs Committee is much appreciated. As we approach the end of this Congress, I hope that her nomination will not be held up or delayed for any reason.

I very much appreciate your attention to this matter. If you have any additional questions, please do not hesitate to call me.

Sincerely,


 Larry Pressler
 United States Senator

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. Name: Hugh Hewitt
2. Position to which nominated: Deputy Director of the United States
Office of Personnel Management
3. Date of nomination: February 25, 1988
4. Address: (List current place of residence and office addresses.)

Residence: 10444 Red Granite Terrace
Oakton, VA 22124

Office: Room 5H09
U.S. Office of Personnel Management
1900 E Street, N.W.
Washington, D.C. 20415
5. Date and place of birth: February 22, 1956 at Warren, Ohio
6. Marital status: (Include maiden name of wife or husband's name.)

Married to Elizabeth Helmer Hewitt
7. Names and ages of children: Diana Taussig Hewitt, 3 years old.
8. Education: List secondary and higher education institutions, dates
attended, degree received and date degree granted.

Secondary: John F. Kennedy High School
Warren, OH
9/70 - 6/74
High School Diploma

College: Harvard College
Cambridge, MA
9/74 - 6/78
A.B.

Law School: The University of Michigan Law School
Ann Arbor, MI
9/80 - 6/83
J.D.

9. **Employment Record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.

9/86 to Present: General Counsel of the U.S. Office of Personnel Management

1/86 to 9/86: General Counsel of the National Endowment for the Humanities, 1100 Pennsylvania Avenue, N.W., Washington, D.C.

4/85 to 1/86: Assistant Counsel, The White House Counsel's Office, Washington, D.C.

7/84 to 4/85: Special Assistant to Attorneys General Smith and Meese, U.S. Department of Justice, Washington, D.C.

8/83 to 7/84: Law Clerk to the Honorable Roger Robb and the Honorable George MacKinnon, U.S. Court of Appeals for the District, Washington, D.C.

6/83 to 7/83: Law Clerk, Gibson, Dunn and Crutcher, Washington, D.C.

9/82 - 6/83: Law Clerk to the Honorable Ross Campbell, Judge, Washtenaw Circuit Court, Ann Arbor, Michigan

6/82 - 9/82: Law Clerk, Gibson, Dunn and Crutcher, Los Angeles, CA, Newport Beach, CA, and Washington, D.C.

9/81 - 6/82: Law Clerk to the Honorable Ross Campbell, Judge, Washtenaw Circuit Court, Ann Arbor, Michigan

2/79 - 8/80: Editorial Assistant to Richard Nixon, San Clemente, CA and New York, NY

7/78 - 2/79: Research Assistant to David Eisenhower, San Clemente, CA

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.

All of my government experience is noted in the response to Question 9.

11. **Business relationships:** List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

Adjunct Professor, The Washington Center, Washington, D.C.
9/36 to Present.

12. **Memberships:** List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.

Member, The District of Columbia Bar Association

Member, The Federal Bar Association

Member, The Administrative Conference of the United States

Member, The Federal City Club, Washington, D.C.

Member, The Harvard Club of New York City

13. **Political affiliations and activities:**

- (a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

- (b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

None.

- (c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years.

\$100 contribution to the re-election campaign of Senator John Warner, 1984.

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

None.

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

First Principles: A Primer of Ideas for the College Bound Student. (book) Publisher: Regnery-Gateway, 1987.
(Copy attached)

"Congress and the Combined Federal Campaign: Prospects for Reform," The Philanthropy Monthly, October, 1987.

"Appropriations Riders Saddle Regulatory Reform," 6 Management 58, 1987. (Copy attached)

"Hiring Fed Attorneys," 6 Management 58, 1987.
(Copy attached)

"One Way to Ensure Judges Be Brief," The Wall Street Journal, July 28, 1986. (Copy attached)

16. **Speeches:** Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

The only formal speech I have given in the last 5 years which I delivered from a text was reprinted in the form of the Philanthropy Monthly article noted above. A copy is attached.

17. **Selection:**

- (a) Do you know why you were chosen for this nomination by the President?

I believe the President nominated me because of my experience at OPM as General Counsel. As General Counsel I have been providing legal advice on all facets of the agency's operations for the past year and a half. The transition to Deputy Director thus would be less difficult than it would be for an individual new to the agency.

- (b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I have been part of Director Horner's senior management team at OPM since September of 1986, and thus possess a working knowledge not only of OPM's programs, but also of the Director's priorities for the year ahead.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if confirmed by the Senate?

I will if requested. I would prefer to continue teaching my seminar for the Washington Center. The course is entitled "Constitutional Law and the American Judicial Process, and is attended by 15 to 20 undergraduates interning in Washington, D.C..

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

I would only continue my teaching, noted in the answer to question 1 above.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, which is applicable?

Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

I receive a stipend of \$1,000 per semester for a seminar I teach to undergraduates from the Washington Center.

In addition, I have a royalties arrangement with my publisher Regnery-Gateway. I have yet to receive any payment under this arrangement, and I received no advance for the book.

2. Indicate any investments, obligations, liabilities, or other relationships which would involve potential conflicts of interest in the position to which you have been nominated.

None.

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

Other than work in my official capacities, I have conducted no such activity. As General Counsel for OPM, I worked closely with Senator Deconcini's and Congressman Hoyer's staff on developing legislation to govern the conduct of the Combined Federal Campaign.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

I do not anticipate that a potential conflict will arise. I am very aware, however, of the need to avoid such conflicts. Should circumstances arise that would suggest a potential conflict, I would immediately request the counsel of OPM's Designated Agency Ethics Officer, Mr. Stuart Rick, and would follow his recommendation on how to avoid the conflict.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative violation other than a minor traffic offense? If so, provide details.

I was a defendant in a small claims court case arising out of a fender-bender parking lot collision. The case was heard in the circuit court of Orange County, California, in either 1979 or 1980. I contested fault and the amount of damages. The court awarded plaintiff a reduced amount of approximately \$250.

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?

No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None.

E. FINANCIAL DATA

(information retained in Committee file)

AFFIDAVIT

HUGH HEWITT being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge current, accurate, and complete.

HH Hewitt

Subscribed and sworn before me this 2nd day of March, 1988

District of Columbia

Felissimo P. Cajules
Notary Public

My commission expires 3-31-89

AFFIDAVIT

HUGH HEWITT being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Hugh Hewitt

Subscribed and sworn before me this 2nd day of March, 19 88

District of Columbia

Felicesima P. Cajulis

Notary Public

My commission expires 3-31-89

PRE-HEARING QUESTIONS FOR HUGH HEWITT
FROM THE U. S. SENATE COMMITTEE ON GOVERNMENT AFFAIRS

I. NOMINATION PROCESS AND POTENTIAL CONFLICTS

1. Is there any issue currently under consideration by the Office of Personnel Management from which you have to disqualify yourself? If so, please explain.

No.

2. Were any conditions, expressed or implied, attached to your nomination?

No.

3. Have you made any specific commitments with respect to the basic policies and philosophy you will seek to implement as Deputy Director of OPM?

No.

4. Why did you take this appointment to be Deputy Director of OPM?

I believe in the importance of OPM's mission, in the direction Director Horner has given the agency and in the competence and professionalism of OPM's staff. It is a fine organization, one with which I will always be proud to have been associated.

II. RESPONSIBILITIES OF THE DEPUTY DIRECTOR OF OPM

1. What do you believe are the most important functions of the position of Deputy Director?

The single most important function of the Deputy Director of OPM is to support the Director in the policies she pursues. This support can take any number of forms, from staff coordination to policy development. The Deputy Director can also serve a useful role as sounding board and staff advocate, but only to the extent that such a role is envisioned and authorized by the Director.

2. Describe the relationship you expect to have to the Director and Associate Directors of OPM.

As General Counsel, I have developed and continue to maintain excellent professional and personal relations with all of these individuals, relations marked by candor and good humor. I expect this pattern to continue.

3. Do you believe action needs to be taken to improve the morale and productivity of government employees? If so, what?

Morale and productivity are of course closely linked. Improvements on the latter are dependent upon a sustained commitment to the former. Morale in turn depends on a high level of information exchange between the federal workforce and its senior career and political executives. At a minimum members of both the executive and legislative branches should be candid in addressing employee dissatisfaction in areas of compensation and benefits. But morale problems extend far beyond these compensation issues, to the image of public employees to working conditions within the federal sector, to the very basic demand that executives account for employees' views. Director Horner has initiated numerous devices within OPM that could be reproduced to good effect throughout the federal workplace ranging from small efforts to attend all agency-wide employee events and systematic employee recognition efforts to use of the Federal Personnel Manual to highlight the need for good communication with employees on issues ranging from AIDS in the workplace to drug testing. I support all of these steps as well as the Director's general view that not enough credit is given the employees of the federal government for the day-to-day commitment they evidence to public service.

4. What actions will you take as Deputy Director of OPM to improve both the capability and the public perception of the civil service?

The Deputy Director best contributes to this effort by effectively administering delegated responsibilities from the Director so as to provide the Director the time and opportunities to address in a variety of forums and through a variety of policy initiatives the goals of increased capabilities and of increased appreciation of the civil service.

5. What steps will you take to improve the operations of OPM itself?

The Deputy Director is responsible for the smooth operation of OPM's Unified Planning System ("UPS"). UPS is the budget process by which the resource requests of OPM's offices and groups are assembled, analyzed, and eventually reconciled. It covers three budgets at any given time. The system continues to need improvement, and I would devote a substantial amount of time to that goal.

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The Combined Federal Campaign also answers to the Deputy Director, and as I have been involved in the legislative reform of the Campaign, I would expect to devote some time to this the first year of the new law's operations.

The Deputy Director is also the traditional supervisor of regional operations, and often the advocate for the regions in discussion with senior executives for programs at headquarters. I would expect to continue this role.

I would also be available to take on any other duty assigned me by the Director.

Most of the machinery for the efficient operation of OPM, as well as the professional talent to make that machinery run, is already in place. The Deputy Director should be, and I would be, concerned with maintaining the effectiveness of an already effective agency.

III. INTERNAL AND EXTERNAL RELATIONS OF OFFICE OF PERSONNEL MANAGEMENT

1. What should be the relationship of OPM to (a) the President, (b) the Congress, and (c) other Executive agencies?

The Civil Service Reform Act of 1978 placed OPM squarely in the Executive Branch. By stripping away the quasi-judicial functions of the old Civil Service Commission, OPM was made clearly accountable to the President, and placed under his control. I believe this to have been an excellent change, as a central management agency must be responsive to the leadership of the branch on which behalf it functions.

As with other Executive branch agencies, OPM must recognize and respond to the Constitutional role of Congress in its legislative, oversight, and appropriations roles. The Congress is intended to play each of these roles, and every Executive branch agency should acknowledge this. I would thus attempt to continue Director Horner's policies of close consultation with and responsiveness to Congressional mandates.

OPM is a central management agency, and as such, is slightly different from other Executive agencies. Where the law assigns OPM government-wide responsibilities, those responsibilities vest OPM with control over personnel policies used by other agencies. The grants of

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authority provided by various laws does not, however, bestow on OPM a license to conduct its business in an arrogant or high-handed fashion. OPM ought to be a service agency with service to its clients --the other agencies-- as a central priority. That said, OPM must often act as a guardian of merit system principles that protect the public service and as a result must be ready to demand allegiance to those principles by all agencies.

2. What is your view of the role of OPM in relation to the Merit Systems Protection Board, the Special Counsel and the Federal Labor Relations Authority?

OPM is a partner with these agencies in protecting the merit system. Joint responsibility of this sort often breeds cooperation along research and investigative lines. At the same time that the agencies are partners, they also bring legislated perspectives to their duties which will result in divergence of opinion on numerous subjects. OSC and OPM have, for example, agreed on the efficacy of the Hatch Act. That agreement does not anticipate in any way agreement on a host of other issues such as whether a particular set of facts constitutes a prohibited personnel practice. OPM is an advocate of government as employer, and often is called upon to defend the law's bundle of rights given to the government as employer. OPM practices that advocacy before the FLRA and the MSPB. It does so aware, however, that binding decisions of those bodies must be enforced even when those decisions run contrary to OPM's view of the law's command.

3. Do you believe any changes in the functions and authority of your office, the Special Counsel or the Merit Systems Protection Board are warranted?

Numerous pieces of legislation have surfaced over the years on various proposed adjustment to the division of authority between these agencies. While I defer to announced Administration positions regarding these proposals, I believe that we are only now entering an era where enough data has been accumulated on how the system functions to begin a reasoned assessment of its usefulness.

4. In 1983, the Congress gave the Director, Office of Government Ethics substantial independence and autonomy. Will you support and preserve the independent standing of this office?

Yes. The law does provide, however, for a consultation between OPM and OGE on numerous issues. That consultation ought to continue because the law requires it.

5. What should be the relationship of OPM to OMB?

OPM is an Executive Branch agency and thus must clearly submit to the legitimate demands from OMB for information and to legitimate instructions received by OMB regarding the budget process.

6. Please describe your concept of the appropriate role of OPM in relation to individual departments and agencies.

OPM ought to act as a wise and patient teacher would act towards a group of students who are largely very competent and very eager to do the correct thing. Some agencies require more oversight than do others. Where an emphasis on oversight is necessary due to a record of insufficient attention to merit principles, that oversight should be exercised. Where an agency has a history of competent administration of the personnel system, that record should be respected and OPM's resources directed elsewhere.

OPM must also be committed to rapid and effective response to agencies' needs in areas such as recruitment and hiring. OPM has taken great steps in this area, and should continue to explore every avenue to make the search for the next generation of talented civil servants even more effective.

In short, OPM is both a service agency and an enforcement agency. If sufficient attention is paid to the former mission, the need for the latter can be expected to diminish.

IV. THE CIVIL SERVICE REFORM ACT

1. What oversight procedures, if any, are needed to monitor the implementation of the Civil Service Reform Act and assure compliance with merit principles?

In my view, the emphasis should be on improving the efficiency and effectiveness of government operations through giving managers more flexibility to act and employees more opportunity to contribute innovative ideas. In such an atmosphere, there must be tolerance for occasional mistakes. Second-guessing and casework approach to oversight is counterproductive to such an approach.

There is a need for OPM to exercise oversight to assure that authorities provided to agencies are used properly and merit principles followed. Our experience indicates, however, that Federal managers do not abuse the system to any significant degree under deregulation and delegation initiatives. In this regard, we believe it generally is more appropriate for agencies to take action on individual, isolated cases of above.

The CSRA also provided for shared oversight responsibility within the Executive Branch. In this connection, it may be useful to review the roles of the various oversight bodies in government to determine if there is duplication of effort, confusion among these responsibilities or other inherent inefficiencies. These bodies include the MSPB, the Special Counsel, the FLRA, agency-level channels for resolution of labor-management issues and, of course, the GAO.

2. What changes, if any, would you propose to make the Civil Service Act and/or the civil service itself more responsive and effective?

I support the Administration's legislative proposal, the Civil Service Simplification Act.

V. FEDERAL WORKFORCE

1. How do you define productivity in the federal workforce? What measures would you suggest, if any, to improve productivity?

Generally, productivity is a measurement of input (staff work hours) to output (produced goods, services, etc.) with appropriate attention to the quality, as well as the quantity, produced.

Productivity, including quality, can be improved in a number of ways. We currently are stressing performance incentives, both individually and group gainsharing, deregulation and delegation giving managers more flexibility in personnel management decisions, and various forms of employee involvement such as quality circles and labor-management cooperation. In addition, we believe productivity can be enhanced through greater emphasis on quality which reduces the amount of reworking needed, improves customer satisfaction and raises employee morale.

2. What is your view of the quality of federal executives in the Senior Executive Service? How would you improve that quality, if needed?

Every member of the SES with whom I have personally worked has impressed me with their knowledge, initiative, and allegiance to public service. While there may be exceptions to this general rule of excellence, I suspect that they are very few in number.

Maintaining this level of quality requires numerous efforts in the area of morale and pay. Director Horner, working from a set of recommendations developed from within the SES, has set many of these efforts in motion, including formation of a standing SES Advisory Committee. The Director also supported, and I support, the large portion of the recommendations of the President's Task Force on SES Compensation which called for improvements in SES compensation levels. Pay is only one issue, but as the most visible issue, deserves prompt attention.

3. What actions would you take to stem the loss of high-grade, highly trained professionals in technical fields?

It is certainly important for the government to be able to attract and retain competent, high-quality personnel. While the greater problem appears to be on the recruitment side, the Administration's currently proposed Civil Service Simplification Act would address both issues. Our experience with the Navy's "China Lake" demonstration project has clearly illustrated the advantages of a more market-sensitive system and broader pay ranges which permit managers to reward high quality performance. CSSA would incorporate these features and would provide even greater flexibility through the use of

recruitment and retention bonuses. The newest of our demonstration projects underway at the National Bureau of Standards incorporates many of these concepts.

4. What is your view on any measures that might be taken to improve, enhance, or modify the current Federal workers' classification system?

We need to make the classification system easier for managers to understand and apply. We need to move away from making pay decisions based on hairline differences between job duties which we must do currently under a white collar system with over 400 occupations, 18 grades and 10 steps per grade. In the short run, OPM has begun to write broad, generic standards covering many similar occupations, shortening their length and writing them in plain English. In the long run, we need legislative changes such as those proposed in the Civil Service Simplification Act which permits greater flexibility in balancing external and internal pay alignments through the use of broad occupational groupings and pay bands.

VI. MANAGEMENT ISSUES

Note: The questions I received under this heading began with a question number "3". There was no question 1 or 2.

3. It has been recommended in the past that OPM take the lead in planning and promoting a major program to strengthen the personnel role of Federal managers, including taking greater control over critical personnel processes such as recruitment and classification.

* Do you support the concept of holding Federal managers responsible and accountable for personnel management?

* Do you believe more personnel management responsibilities should be delegated to line managers?

Definitely, yes. Line managers should be able to make personnel decisions which affect their ability to accomplish their missions. Managers are responsible and accountable for personnel management. They should be delegated the authorities which correspond to those responsibilities. I favor a broader role for line managers in both recruitment and classification.

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4. Under 5 U.S.C. 4703, OPM has the authority to conduct and evaluate demonstration projects that would result in improved Federal personnel management. To what extent do you believe that authority should be used?

I believe that our authority to conduct and evaluate demonstration projects should be used to the fullest extent permitted by law. Our modifications to civil service laws and regulations will be wiser if we base them on tested results. However, we need to ensure that projects address the most important issues, that they are designed to fill in gaps in our knowledge, that their features - if successful - would be appropriately transferred to other settings, and that we act timely to adopt the most positive results and to terminate those features or projects which fail to meet expectations.

In the past year, demonstration projects have been implemented involving gainsharing in a unionized environment and total compensation comparability in a highly professional scientist/engineer environment. We are working closely with agencies on additional projects involving such things as pay-for-knowledge in a unionized workforce, innovative staffing policies, relocation and retention bonuses, and integration of pay and classification systems.

VII. EMPLOYEE BENEFITS

1. Do you support the basic premise of pay comparability? Do you believe the current system should be changed? Do you believe that pay and benefits should be considered a single compensation package?

I certainly support the basic premise that the government must be able to compete for well-qualified individuals. Obviously, the current system has problems. Because the General Schedule is a nationwide, monolithic system designed to stress uniformity in pay and classification, it both overpays and underpays depending on the occupation and locality.

Effective recruitment and retention is handicapped because the system does not have the inherent flexibility needed to balance internal alignment with the realities of the labor market. In addition to the flexibility which would be gained through CSSA, we need to look at market-sensitive approaches which would include locality pay.

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To be competitive, an employer must be aware of the total compensation packages being offered by competitors. However, I would have some reservations about using any measuring device to make formula-driven adjustments to a single total compensation program. While all factors should be taken into consideration, many legitimate issues can influence the mix of an employer's pay and benefits package, e.g., cost, age and mix of the workforce, emphasis on pay versus benefits, tax implications, etc.

2. What changes, if any, will you propose as Deputy Director of OPM to Federal leave policies?

It would be premature for me to be outlining a new federal leave policy at this time. While overall, federal leave provisions are generous, there are some gaps in the current system, particularly for those employees with short service who have not had the chance to accumulate leave or who may be left without income due to catastrophic illness as a result of which all leave is exhausted. Our current leave sharing program is one attempt to address this problem. However, we should also be exploring other alternatives including a short-term disability program coupled with appropriate adjustments in the current leave system.

3. How would an early out retirement window help the federal workforce?

An early retirement window is viewed differently by employees and agencies.

Employees -- allows them to terminate federal employment early and receive a retirement benefit. For many of them, early retirement from their federal job permits them to seek other employment elsewhere. The vacancies created by the early retirees can help younger workers move up the career ladder.

Agencies -- there is little benefit from an early retirement authority for those agencies that do not need to reduce employees. Any employees leaving would need to be replaced. However, when agencies do need to cut back, OPM can authorize voluntary early retirements to reduce the workforce. In a reduction-in-force situation, many of the lower graded employees are targeted for separation. Since many early retirees are higher graded employees at the journey level, their leaving not only saves money but also saves the younger workers. In calendar year 1988, OPM has already approved 32 voluntary early retirement authorities.

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VIII. RELATIONS WITH CONGRESS

1. If you are confirmed, do you agree without reservation to appear and testify before any duly constituted committee of the Congress?

Yes.

2. If you are confirmed, do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress?

Yes.

SENATOR DENNIS DeCONCINI
CONFIRMATION OF HUGH HEWITT

Mr. Chairman, thank you for allowing me the opportunity to inform the Committee of my strong support for the nomination of Hugh Hewitt to be Deputy Director of the Office of Personnel Management. Mr. Hewitt deserves this Committees swift and overwhelming approval.

I have become acquainted with Mr. Hewitt through the long and drawn out process of revising and rewriting the law and regulations governing the Combined Federal Campaign. While my staff and I have not always been in agreement with Mr. Hewitt, we have found him consistently fair, honest and openminded. CFC is an issue where discussions have often been heated and tempers have flared. Throughout the process, Hugh has been helpful, cooperative and even--there is nothing more that we in Congress can ask of our top Public Servants.

Mr. Chairman, I thank you for holding this hearing and urge you to move swiftly toward confirmation.

A. BIOGRAPHICAL INFORMATION:

1. Name (Include any former names used.)
Tirso del Junco, M.D.
2. Position to which nominated:
Governor of the United States Postal Service
3. Date of nomination:
February 9, 1988
4. Address: (List current place of residence and office addresses.)

1570 San Pasqual	4924 Sunset Boulevard
Pasadena, Calif. 91106	Los Angeles, Calif. 90027
(Residence)	(Office)
5. Date and place of birth:
04/20/25
Havana, Cuba
6. Marital status: (Include maiden name of wife or husband's name.)
Celia Bobadilla del Junco
7. Names and ages of children:

Tirso del Junco, Jr., M.D.	32
Robert del Junco, M.D.	31
Rose Marie del Junco Erickson	30
Maria Elena Walker	28
8. Education: List secondary and higher education institutions, dates attended, degree received and date degree granted.

Colegio Baldor	Havana, Cuba	1938-1942	BS & BA
University of	Havana, Cuba	1942-1949	M.D.
Havana Medical School			
Hollywood Presbyterian		1949-1950	Rotating Internship
Medical Center	California		
Queen of Angels			
Medical Center	California	1951-1954	Residency General Surgery
		1954-1955	
University of Pennsylvania			Post Graduate
Graduate School	Philadelphia, Pa.		Surgical Class
9. Employment record: List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.

Medical Doctor	Tirso del Junco, M.D. Inc.	5/66-Present
	4924 Sunset Blvd.	
	Los Angeles, California	90027

9. Employment record: List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.

Medical Doctor	Tirso del Junco, M. D. 2010 Wilshire Blvd. Los Angeles, Ca. 90057	1957-5/1966
Captian Medical Corps	U.S. Army 522 Newcomer Richland, Wa.	1955-1957
Student/Surg. Class	University of Penn.	1954-1955
Post Grad. Work	Graduate School Philadelphia, PA.	
Resident/Gen. Surg.	Queen of Angels Hospital 2301 Bellevue Ave. Los Angeles, Ca. 90026	1951-1954
Rotating Intern- ship	Hollywood Presbyterian Medical Center 1300 N. Vermont Ave. Los Angeles, Ca. 90027	1949-1950

10. Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State or local governments, other than those listed above.

Member-Board of Regents University of California
1985-1997
Commissioner-Christopher Columbus Quincentenary Jubilee
Commission 6/3/86-12/22/87
Delgate-United States Delegation 22nd Conference of UNESCO
Paris, France 1983
Presidential Commission on Broadcasting to Cuba-Radio Marti
Member-Air Resources Board State of California 1982-1986
President-Board of Medical Examiners State of California
1971-1972
Member-Board of Medical Examiners State of California 1967-1971

11. Business relationships: List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.
- Advisory Board Member-Frawley Enterprises
Member-Board of Trustees-Queen of Angels Hospital Clinic
and Research Foundation
President-Tirso del Junco, M.D. Inc.
Partner-A. Poindexter & T. Del Junco Partnership
Member-Board of Directors, Salesian Boys Club of Los Angeles

11. Business relationships: List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.
 Founder & Former Chairman of the Board Los Angeles National Bank.
 Former Member Board of Directors-Technicolor Inc.
 Former Advisory Board Member-Los Angeles National Bank.
 Former Medical Director-Technicolor Inc.
 Former Medical Director-Schick Electric Inc.
 Former Medical Director-St. Vincents Hospital Alcoholic Unit
 Former Member Board of Directors-Santa Marta Hospital
 Chairman-Board of Directors-Hollywood Park Charities.

12. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.
 Assistant-Clinical Professor of Surgery California College of Medicine at Irvine.
 Medical Director-Varig Brazilian Airlines Los Angeles, Ca..
 Chairman-Department of Surgery Santa Marta Hospital-L.A. Calif
 Chief of Medical Staff-Queen of Angels Hospital 1979
 Former Chairman-Department of Surgery Queen of Angels Hospital
 Los Angeles 1972 & 197
 Former Chairman-Medical Education Committee Queen of Angels Hospital, Los Angeles 1970-1971-1974.
 Chairman-Emergency Services Committee Queen of Angels Hospital
 Diplomat-American Board of Surgery
 Member-Los Angeles Surgical Society
 Member-Pan American Medical Association
 Member-Public Health League of California
 Member-United Physicians of California
 Member-Association of American Physicians & Surgeons
 Former Councilor-Los Angeles County Medical Association
 Member-Los Angeles County Medical Association
 Member -Patriot Committee Army Ball 1975
 Member-Jonathan Club Los Angeles
 Member-Huntington Harbor Beach Club-Huntington Beach, Calif.
 Member-International Star Class Yacht Racing Association
 Member-Big Five Club Miami, Florida
 Member-Inter-American Club of Los Angeles
 Member-American Club in Miami
 Trustee-Ecumenical Foundation of America
 Former Delegate-California Medical Association
 Former Councilor-California Medical Association
 Former Member-Federal Candidate Selection Committee, CALPAC
 Former Member-Advisory Board Flintridge Sacred Academy
 Former Member Advisory Board Saint Francis High School
 Former Member-Los Angeles County District Attorneys Advisory Council
 Former Member Board of Directors -Citizens for Law Enforcement Needs

13. Political affiliations and activities:

- (a) List all offices with a political party for which you have been a candidate.
 - (b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.
 - (c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years.
- Delegate-Republican National Convention 1968, 1972, 1976, 1980 and 1984.
 National Chairman-Hispanic Voters for Reagan/Bush "84" Campaign.
 National Chairman-"VIVA" 84
 Chairman-California Republican Party 1981 and 1982
 Vice-Chairman, California Republican Party 1979-1980
 Chairman-Republican National Hispanic Assembly 1983-1985
 (The official Hispanic Auxillary of the Republican National Committee)
 Member-Board of Directors, Republican Associates of Los Angeles 1979-Present
 Secretary-California Republican Party 1972-1976
 Assistant Secretary-California Republican Party 1968-1972
 President-California Republican Assembly 1968
 Member-President and Vice President Electoral College State of California 1980 and 1984
 Member-Committee to elect Richard Nixon President 1968-1972
 Member-Committee to elect Ronald Reagan President 1966, 1976, and 1980.
 Member-Committee to elect President Gerald Ford and Senator Dole, 1976
 Chairman-Budget and Expenditure Committee, California Republican Party 1986
 Delegate to California Republican Party 1968 to Present
- (c)
- Ronald Reagan for President Primary and General Election \$2,000 1980 & 1984
 George Deukmejian for Governor \$1,000 1982
 Pete Wilson for U.S. Senate 1982 & 1987 \$2,000
 I have made various contributions in the neighborhood of \$100 to numerous candidates and office holders for Congress, State Assembly and Assembly races throughout my many years of participating in the Republican Party.

14. Honors and awards: List all scholarships fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

Fellow-American College of Surgery
 Fellow-American College of Angiology
 Knight of Magistral Grace-Sovereign Military Order of Malta
 Member-1948 Cuban Olympic Rowing Team (London, England)
 Americanism Medal - The Daughters of the American Revolution
 (1969)

Citation for Outstanding Services Americanism Educational Award

Community Leadership Award

Mexican-American Foundation, January 1985

1984 Outstanding Achievement Award-The National Association of Cuban-American Women and Men of the USA

Physician of Year Award-The University of California

Irvine/California College of Medicine

Medicine California Role Model Award-Mexican/American Foundation 1984

15. Published writings: List the titles, publishers, and dates of books, articles, reports or other published materials which you have written.

Only in the field of medicine over 20 years ago.

16. Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

None relevant to the position for which I have been nominated.

17. Selection:

(a) Do you know why you were chosen for this nomination by the President?

I am not sure why I was chosen by the President for this nomination but I would assume that the fact that I am Hispanic with a strong professional and business background and have strong business and professional qualifications were determining factors.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

As to my qualifications, I have 25 years of business and professional experience, including banking experience having served in many capacities from Chairman of the

Board and Board of Directors on a number of corporations. I presently serve as a Regent for the University of California (largest university system in the world). Also I have had a very strong deep commitment to public service through many years of political and volunteer committee efforts. (See biographical data)

B. FUTURE EMPLOYMENT RELATIONSHIPS:

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?
NO

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government: If so, explain.
NO

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?
NO

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? NO

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?
YES

C. POTENTIAL CONFLICTS OF INTEREST:

1. Describe all financial arrangements deferred compensation agreements, and other continuing dealings with business associates clients or customers. NONE

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.
NONE

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.
NONE

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

Participated as a former Chairman and officer of the California Republican Party in numerous debates and discussions concerning the platform of the Republican Party at a State and Federal level of and on for the past 25 years. No direct lobbying at any time.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

I will disqualify myself and not participate in the discussion if such a conflict of interest matter existed.

6. Do you agree to to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

YES

D. LEGAL MATTERS:

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

Only those related to my medical profession, (Malpractice cases) Attachment#1

2. Have you ever been investigated, arrested, charged or held by any Federal, State or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

NO

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

All of the Directors of Los Angeles National Bank including me, were ordered to reimburse the bank for all damages (attorneys fees and loan balances) caused by two loans which exceeded the lending limits of the bank. My obligation under the Order has been satisfied in full. None of the directors were found to have been guilty of wilful misconduct or gross negligence.

D. LEGAL MATTERS:
Question#1 ATTACHMENT 1

8/25/77 Case#C106293---Audrey Summers-----Case Dismissed without
going to trail.
4/15/76 Case#C157814---James Whitehurst----Case Dismissed without
going to trail.
7/08/74--Case#953357---Cristine Stagakes---Case Dismissed without goin
to trial.
10/10/74 Case#C102456---Zenaida Gonzalez---Case Dismissed without
going to trial.
3/11/74 Case#C75814---Juan Echevarria---- Case Dismissed without
going to trial.
1/11/78---Case#C226322---Graciela Flores---Wrongful death-Anesthesia
Death Hospital & Physicians
settled for \$29,000
7/8/82---Case#C417234--Francisca Alfonso Anesthesiologist being
sued because patient
arrested before surgery
started. Patient had a
complete recovery. It is
my understanding that suit
was dismissed because of lack
of damages.

D. LEGAL MATTERS:

3. Continued:

Comptroller of Currency vs. Tirso del Junco et al
Appeal CA No. 81-7466
Agency Docket No. AA-EC-80-9

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?

NO

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

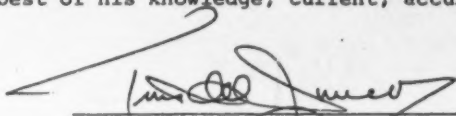
PLEASE SEE BIOGRAPHICAL DATA.

E. FINANCIAL DATA:

(information retained in Committee file)

AFFIDAVIT

Tirso del Junco, M.D. being duly sworn, hereby states that he has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his knowledge, current, accurate and complete.



Tirso del Junco, M.D.

Subscribed and sworn before me this 26th day of February 1988.


Alice De Leon, Notary Public



4924 Sunset Blvd., 2nd Floor, Los Angeles, CA 90027

PRE-HEARING QUESTIONS FOR NOMINEE
TIRSO DEL JUNCO, M.D.
GOVERNOR, POSTAL BOARD OF GOVERNORS

I. NOMINATION PROCESS AND POTENTIAL CONFLICTS:

Question 1

Were any conditions, expressed or implied, attached to your nomination to be a Governor of the United States Postal Service?

None

Question 2

What commitments have you made with respect to the policies and programs you will attempt to implement as a Member of the Board of Governors?

None

Question 3

Are there any issues involving the Postal Service from which you may have to disqualify yourself: If so, please explain.

None

Question 4

Did you actively seek this nomination? Explain.

No

Question 5

Why do you feel you are qualified to be a member of the Board of Governors and what contribution do you feel you can make to the Postal Service as a member of the Board?

I have had extensive business, professional and community experience. As a member of the Board of Directors of various companies, I have been involved in the decision making process in major capital expenditures, budget, labor and personnel matters.

As a member of the Board of Regents of the University of California, largest university system in the U.S.A., we have to deal with a broad variety of issues from investments, budget, administrative and education policies.

Tirso del Junco, M.D.
Page: 2

I. NOMINATION PROCESS AND POTENTIAL CONFLICTS:

My entire professional and business career of over 35 years has been dedicated to service in public and private sector.

All of the above plus my banking experience will contribute to the problem solving and policy making of the Board.

II. RESPONSIBILITIES OF THE BOARD OF GOVERNORS:

Question 1

What is your view of the role of the Board of Governors of the Postal Service: What do you believe are its most important functions and responsibilities:

I view the role of the Board of Governors as I would a private corporate board, establishing the necessary financial and administrative policies that will ensure excellence in Postal Service to citizens. This objective should be provided at the least possible cost to the consumer.

Question 2

How do you view the relationship of the Board of Governors to the Postal Service and, specifically, to the Postmaster General?

I view the Board of Governors as a policy making body with the Postmaster and Management implementing said policy. The Board is also involved in the appointment of the Postmaster General and the Assistant Postmaster General.

Question 3

How do you view the relationship and responsibilities of the Board of Governors to the President, the public and the Congress.

The Board of Governors is appointed by the President with the advise and consent of the Senate therefore accountable to both the President and Congress; always responsive and sensitive to the public.

Question 4

How do you view the respective roles and the relationship between the Board of Governors and the Postal Rate Commission?

Tirso del Junco, M.D.
Page: 3

II. RESPONSIBILITIES OF THE BOARD OF GOVERNORS:

The Postal Rate Commission is an independent body responsible for assessing rate and classification changes after hearing and reviewing recommendations presented by various interested groups.

The Postal Rate Commission recommends for adoption to the Board of Governors all postal rate and classification changes.

III. POSTAL REORGANIZATION

Question 1

Various proposals have been made to increase the accountability of the Postal Service to the Congress including Presidential appointment of the Postmaster General or the Chairman of the Board of Governors. How do you feel about these proposals?

I have not studied the reasons for the various proposed changes, nevertheless I am confident that a knowledgeable well selected Board with full understanding of the needs and working of the Postal Service can provide the necessary accountability to the President and Congress.

I will continue to study the new proposal, keeping an open mind and ready for changes.

Question 2

The Postal Rate Commission is a unique regulatory agency in that it does not have final decision-making responsibility with respect to most matters brought before it. As you know, this responsibility rests with the Board of Governors of the Postal Service. Do you believe that this arrangement should be maintained? If so, why?

I favor maintaining the present arrangement, it is a sensible one.

The final decision should rest with the Board in view that the postal rate and classification changes impact severely the revenues into the Postal Service and the consumer.

Tirso del Junco, M.D.
Page: 4

Question 3

Would you recommend any changes in the role and responsibilities of either the Postal Rate Commission or the Board of Governors?

I have no recommendation at present.

IV. POSTAL SERVICE OPERATIONS

Question 1

To what extent do you view the Postal Service as public service appropriately financed out of the United States Treasury?

It is my understanding that it was the intent of Congress in the re-organization of the Postal Service to have the consumer of mail services pay for the cost.

The Board of Governors ultimately must attempt to balance its budget without the helping hand of the United States Treasury. This should be done by its effective utilization of new equipment, technology and labor force; rate increases should be instituted as a last resort.

As a governor I would feel a strong commitment to provide quality low cost mail service to the public.

V. RELATIONS WITH CONGRESS

Question 1

What suggestions do you have for strengthening the relationship of the Board of Governors to the Congress. Do you believe that this is necessary?

There should be a constant ongoing open and frequent communication between Congress and representatives of the Postal Services, so both can be appraised of existing problems and concerns.

Because of my limited knowledge about the present relationship, I cannot offer further suggestions.

Question 2

Do you agree without reservation to respond to any reasonable request or summons to appear and testify before any duly constituted Committee of the Congress:

Yes

SAM NUNN, GEORGIA, CHAIRMAN
 JOHN C. STEWNS, MISSISSIPPI
 J. JAMES ECKR, NEBRASKA
 CARL LEVIN, MICHIGAN
 EDWARD M. KENNEDY, MASSACHUSETTS
 JEFF BINGAMANN, NEW MEXICO
 ALAN J. DIXON, ILLINOIS
 JOHN GLICK, OHIO
 ALBERT GORE, JR., TENNESSEE
 TIMOTHY E. WIRTH, COLORADO
 RICHARD C. SHELLEY, ALABAMA
 ARNOLD L. PUNARO, STAFF DIRECTOR
 CARL M. SMITH, STAFF DIRECTOR FOR THE MINORITY

JOHN W. WARNER, VIRGINIA
 STROM THURMOND, SOUTH CAROLINA
 GORDON J. HUMPHREY, NEW HAMPSHIRE
 WILLIAM S. COOPER, MAINE
 DAN QUAYLE, IOWA
 PETE WILSON, CALIFORNIA
 PHIL GRAMM, TEXAS
 STEVEN D. SYMMS, IDAHO
 JOHN MCCAIN, ARIZONA

United States Senate

COMMITTEE ON ARMED SERVICES
 WASHINGTON, DC 20510-8050

June 22, 1988

The Honorable John Glenn
 Chairman
 Senate Committee on
 Government Affairs
 United States Senate
 Washington, D.C. 20510

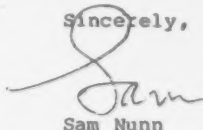
Dear John:

I am delighted to learn that Tirso del Junco is under consideration as a Member of the Board of Governors of the U.S. Postal Service.

While I do not know Tirso del Junco personally, he comes to me highly recommended by someone whose judgment and personal advice I rely upon and trust. I will let his outstanding professional record, as evidenced by the enclosed resume, stand on its own. Let me simply add that I believe he will bring leadership, a strong commitment and a clear sense of direction to his duties as a Member of the Board of Governors of the U.S. Postal Service.

Please contact me if I can provide additional information about Tiro del Junco. I hope you will give him every consideration consistent with your current selection procedures.

Sincerely,



Sam Nunn

cc: Sen. David Pryor

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. Name:

Richard Harold Headlee

2. Position to which nominated:

Federal Retirement Thrift Investment Board

3. Date of nomination:

March 23, 1988

4. Address:

Residence: 26129 Hidden Valley Drive
Farmington Hills, MI 48018

Business: Alexander Hamilton Life Insurance Company of America
P.O. Box 1776
33045 Hamilton Boulevard
Farmington Hills, MI 48018

5. Date and place of birth:

May 16, 1930 - Fort Dodge, Iowa, USA

6. Marital status:

Married: Mary Mendenhall Headlee

7. Names and ages of children:

Michael Steven Headlee	38	5/2/50
William Douglas Headlee	37	5/24/51
Mary Kathryn Headlee Drake	35	8/15/53
Richard Bruce Headlee	33	3/7/55
Natalie Ann Headlee Blackwell	30	6/15/57
Carolyn Headlee Sharette	28	10/4/59
Laura Headlee Campbell	27	3/13/61
Howard Mendenhall Headlee	23	8/18/64
Elaine Headlee	20	5/16/68

8. Education: List secondary and higher education institutions, dates attended, degree received and date degree granted.

Ft. Dodge High School, Ft. Dodge, Iowa - 1944-1947
Richfield High School, Richfield, Utah - 1947-1948
Utah State University, Logan Utah - 1949-1953 Bachelors Degree

9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.

1972 to Present:	President and CEO of the following: Alexander Hamilton Life Insurance Company of America Alexander Hamilton Insurance Company of America Hamilton National Life Insurance Company Alexander Hamilton Life Insurance Company of Arizona Description: Insurance Business P.O. Box 1776 Farmington Hills, MI 48018 Columbus Village, Ltd. U.S. Virgin Islands Description: U.S. Virgin Islands corporation organized to hold title to the St. Croix property and to apply for developmental tax preference treatment. P.O. Box 1776 Farmington Hills, MI 48018
1987 to Present:	Chairman of the Board/CEO First Alexander Hamilton Life Insurance Company (A New York Corporation) Description: Insurance Business P.O. Box 1776 Farmington Hills, MI 48018
3/70 - 11/72.	President Hamilton International Development Company Description: Land Development P.O. Box 1776 Farmington Hills, MI 48018 Vice President Alexander Hamilton Life Insurance Company of America Description: Insurance Business P.O. Box 1776 Farmington Hills, MI 48018
3/68-12/69	President & Director Morbark Industries, Inc. Description: Industrial equipment for wood industry. P.O. Box 1 000 Winn, MI 48896
3/68 - 12/69	Manager - Field Operations Romney for President Committee Description: Election of George Romney Washington, D.C.
7/64 - 2/66	Marketing - Sales Promotion Burroughs Corporation Description: Manufacturing of Data Process and other office equipment. Detroit, MI
7/63 - 6/64	National President (One Year Position) United States Jaycees Description: Public Service Organization 4332 South Atlanta Avenue Tulsa, Oklahoma

8/56 - 7/63 Special Account Representative
Marketing Division
Burroughs Corporation
Salt Lake City, Utah

1953 - 1956 First Lieutenant
United States Army
Honorable Discharge

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above:

Present	Federal Retirement Thrift Investment Board
1971 - 73	Small Business Administration - District Advisory Council
1976 - 84	Board of Trustees - Oakland University
1980 - 82	Chairman (Board of Trustees) - Oakland University

11. **Business relationships:** List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

Question 9 (Employment record) listed my position as an officer with the specified companies. In addition I have served as a board member of the following:

1977 - 79	Board of Directors - West Oakland Bank
-----------	--

12. **Memberships:** List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.

Present	Board of Directors - Economic Club of Detroit
Present	Board of Directors - Citizens for America
Present	Board of Directors - Citizen's Choice
Present	Board of Directors - Business Education Alliance
Present	Board of Directors - Farmington Area Advisory Council
Present	Area Council - Boy Scouts of America
Present	Board Member - Orchestra Hall
Present	Regional Representative - Church of Jesus Christ of Latter-Day Saints
Present	National Advisory Council - Utah State University
1976 - 84	Oakland University Board of Trustees
1980 - 82	Board of Directors - Michigan State Chamber of Commerce
	Chairman-Oakland University Board of Trustees
	Chairman-Michigan Citizens Supporting the President
	Mission President-Counselor, Church of Jesus Christ of Latter-Day Saints
1977 - 80	Chairman of Taxpayers United for Tax Limitation
1975 - 80	State President - 2nd Counselor
1977 - 79	Board of Directors - West Oakland Bank
1972 - 75	Bishop - Detroit-Church of Jesus Christ of Latter-Day Saints

1970	District Advisory Board - Small Business Administration National Chairman - Golden Anniversary of U.S. Jaycees
1969 - 70	Executive Committee - United Republican Fund Bishop-Mt. Pleasant, Church of Jesus Christ of Latter-Day Saints
1968 - 69	President - NORCAP, Inc. (Man Power Program) Lansing Stake High Council - Church of Jesus Christ of Latter-Day Saints
1964 - 65	Board of Directors - Multiple Sclerosis Society
1964 - 64	Board of Directors - Mental Health and Retardation
1963 - 65	Juror - Freedoms Foundation, Valley Forge
1963 - 64	President - United States Jaycees
1961 - 62	President - Utah Junior Chamber of Commerce
1949 - 53	Sigma Nu Fraternity - Utah State University Sophomore Class President - Utah State University Vice President - Blue Key (Honorary) Utah State Distinguished Military Graduate - ROTC

13. Political affiliations and activities:

- (a) List all offices with a political party which you have held or any public office for which you have been a candidate.

1982 Republican Nominee for Governor - Michigan

- (b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Republican Nominee for Governor - 1982
Chairman - Citizens for America - Michigan
Citizens Supporting the President - Michigan
National Tax Limitation Committee
Taxpayers United for the Michigan Constitution
Chairman-Michigan Citizens for Tax Limitation
Committee - George Bush of President
Delegate - Michigan State Republican Convention
Numerous fund raising committees for various state and local candidates. Member Republican Party of Farmington, Oakland County, Michigan and National.

- (c) Itemize all political contributions to any individual, campaign, organizations, political party, political action committee, or similar entity of \$50 or more for the past 10 years.

As a political activist I have made numerous contributions to local, state and federal candidates and industry PAC's. Most recent contributions of significance-Senator Hatch - \$1000, George Bush - \$1000, Gov. Bangerter - \$500, House PAC-\$1300.

14. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

1988	Outstanding Alumnus - Utah State University Centennial
1983	Honorary Doctor of Business State College of Southern Utah
1983	Honorary Member of Gold Key Oakland University
1980	Citizen of the Year Farmington, Michigan

1975	Honorary member in the Beta Gamma Sigma University of Detroit
1974-88	President's Roundtable Utah State University
1966-87	Who's Who in America
1964	JCI Senator #4000 "The Outstanding Alumnus" Utah State University
1961	The Distinguished Service Award Bountiful, Utah

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

None

16. **Speeches:** Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

None

17. **Selection:**

(a) Do you know why you were chosen for this nomination by the President?

My strong leadership background in business and civic affairs, and my willingness to respond to a call to serve.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

Being a leader in the insurance industry in a company with \$2.5 billion in invested assets.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?
No
2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government?
If so, explain.
I will remain as Chairman or President of Alexander Hamilton Life.
3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with our previous employer, business firm, association or organization?
I will remain as Chairman or President of Alexander Hamilton Life.
4. Has anybody made a commitment to employ your services in any capacity after you leave government service?
No
5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever applicable?
Yes

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

There are no deferred compensation agreements and other continuing dealings with business associates, clients or customers.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

None

3. Describe any business relationship, dealings or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

Headlee Tax Limitation Amendment 1978 - See Attached.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer or the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes

Michigan Needs Tax Limitation



MAKE IT HAPPEN

- 1 Your signature on this petition will help to give the citizens of Michigan the opportunity to vote in the fall election to limit government's ability to increase taxes.
- 2 Limit taxes to current % of total personal income of Michigan.
- 3 Provides for tax refund if state tax revenue limit is exceeded (see Sec. 26).
- 4 If state requires programs of local government, also must pay the bill. This puts the brakes on property taxes. (see Sec. 26)
- 5 A tax shift from state to local taxes cannot occur (see Sec. 26)
- 6 Local taxes cannot be increased without voter approval before it can levy any new taxes. (see Sec. 21)

INSTRUCTIONS FOR CIRCULATORS:

- 1 The circulator must check and see the city or township in which you are registered to vote.
- 2 Signatures of each person MUST be of the SAME COUNTY.
- 3 Married women MUST use their own last names. Mary Smith, not Mrs. John Smith.
- 4 Signatures MUST BE made in the presence of the circulator. Do not use old signatures.
- 5 Do not use the last four digits of voter numbers may be used to designate the month.
- 6 Circulator MUST BE A REGISTERED VOTER.
- 7 Circulator SHALL NOT sign nor date the certificate prior to obtaining the last signature on the petition.
- 8 Circulator may sign a petition that he circulates.
- 9 All signatures and dates must be legible and should be printed in.
- 10 Return petition as soon after completion as possible.

Return petitions to:
 Michigan Tax Limitation
 1000 East Main Street
 Lansing, Michigan 48901

Yield if Duplicated. Write for additional petitions

INITIATIVE PETITION AMENDMENT TO THE CONSTITUTION

INDICATE CITY OR TOWNSHIP IN WHICH REGISTERED TO VOTE		NAME	STREET NO. IN CITIES AND TOWNSHIPS OTHERWISE R. # NOS.	POST OFFICE	DATE OF SIGNING		
CITY OF TOWNSHIP OF	CITY OF TOWNSHIP OF				CITY OF TOWNSHIP OF	MONTH	DAY
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							

CERTIFICATE OF CIRCULATOR

I, the circulator of this petition, assert that I am qualified to circulate this petition, that each signature on the petition was signed by a person who is a registered elector of the city or township indicated on the petition, and that the person was at the time of signing the petition a resident of the city or township indicated preceding the signature and that the elector was qualified to sign the petition.

WARNING — Any circulator knowingly making a false statement in the above certificate or any person not a circulator who signs as such or any person who signs a name other than his own as circulator is guilty of a misdemeanor.

CIRCULATOR - Do not sign or date certificate until after circulating petition.

(SIGNATURE OF CIRCULATOR) _____ (DATE) _____

(CITY OR TOWNSHIP WHERE REGISTERED) _____

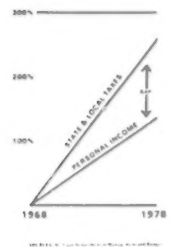
COMPLETE ADDRESS (STREET AND NUMBER OR RURAL ROUTE) _____

POST OFFICE _____

This proposal is to be voted on at the General Election on November 7, 1978. It is proposed that the provisions of the existing Article 18, Section 8, be amended to allow the voters of Michigan to provide limitations on state and township of local government and to provide for the ability of the tax burden from the state to units of local government. (The full text of the proposed amendment appears on the reverse of this document.)

WARNING — Whoever knowingly signs this petition more than once, signs a name other than his own, signs when not a qualified and registered elector, or sets opposite his signature on a petition, a date other than the actual date such signature was affixed, is violating the provisions of the Michigan Election Law.

STATE & LOCAL TAXES VS MICHIGAN PERSONAL INCOME



The Gaps Are Getting Wider!

STOP THIS UNCONTROLLED SPENDING

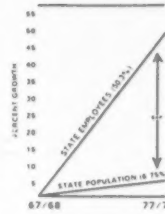
In just ten years, state and local taxes have increased twice as fast as the people's ability to pay (their personal income).

During the same ten years, the state payroll has been increased seven and one-half times faster than the increase in state population.

Where is it going to end? In constitutional amendment!

**SIGN THIS PETITION
VOTE YES IN NOVEMBER**

STATE EMPLOYEES VS STATE POPULATION



INITIATIVE PETITION AMENDMENT TO THE CONSTITUTION

PROPOSED CONSTITUTIONAL AMENDMENT

ADDING SECTIONS 25, 26, 27, 28, 29, 30, 31, 32, 33, & 34 TO ARTICLE IX AND AMENDING SECTION 6 OF ARTICLE IX

Article IX of the Michigan Constitution is hereby amended by adding Sections 25, 26, 27, 28, 29, 30, 31, 32, 33, & 34, and by amending Section 6, such additions and amendments to read as follows:

Sec. 25. Property taxes and other local taxes and state taxation and spending may not be increased above the limitations specified herein without direct voter approval. The state is prohibited from requiring any new or expanded activities by local governments without full state financing, from reducing the proportion of state spending in the form of aid to local governments, or from shifting the tax burden to local government. A provision for emergency conditions is established and the repayment of voter approved bonded indebtedness is guaranteed. Implementation of the section is specified in Sections 26 through 34, inclusive, of this Article.

Sec. 26. There is hereby established a limit on the total amount of taxes which may be imposed by the legislature in any fiscal year on the taxpayers of this state. The limit shall not be changed without approval of the majority of the qualified electors voting thereon, as provided for in Article 12 of the Constitution. Effective with fiscal year 1979-1980, and for each fiscal year thereafter, the legislature shall not impose taxes of any kind which, together with all other revenues of the state, federal aid excluded, exceed the revenue limit established in this section. The revenue limit shall be equal to the product of the ratio of Total State Revenue in fiscal year 1978-1979 divided by the Personal Income of Michigan in calendar year 1977 multiplied by the Personal Income of Michigan in either the prior calendar year or the average of Personal Income of Michigan in the previous three calendar years, whichever is greater.

For any fiscal year in the event that Total State Revenue exceed the revenue limit established in this section by 1% or more, the excess revenue shall be refunded pro rata based on the liability reported on the Michigan income tax and single business tax (or its successor tax or taxes) annual return filed following the close of such fiscal year. If the excess is less than 1%, the excess may be transferred to the State Budget Stabilization Fund.

The revenue limitation established in this section shall not apply to taxes imposed for the payment of principal and interest on bonds, approved by the voters and authorized under Section 13 of this Article, and loans to school districts authorized under Section 14 of this Article.

If responsibility for funding a program or programs is transferred from one level of government to another, as a consequence of constitutional amendment, the state revenue and spending limits may be adjusted to accommodate such change, provided that the total revenue authorized for collection by both state and local governments does not exceed that amount which would have been authorized without such change.

Sec. 27. The revenue limit of Section 26 of this Article may be exceeded only if all of the following conditions are met: (1) The governor requests the legislature to declare an emergency; (2) the request is specific as to the nature of the emergency, the dollar amount of the emergency, and the method by which the emergency will be funded; and (3) the legislature thereafter declares an emergency in accordance with the specifics of the governor's request by a two-thirds vote of the members elected to and serving in each house. The emergency must be declared in accordance with this section prior to incurring any of the expenses which constitute the emergency request. The revenue limit may be exceeded only during the fiscal year for which the emergency is declared. In no event shall any part of the amount representing a refund under Section 26 of this Article be the subject of an emergency request.

Sec. 28. No expense of state government shall be incurred in any fiscal year which exceed the sum of the revenue limit established in Sections 26 and 27 of this Article plus federal aid and any surplus from a previous fiscal year.

Sec. 29. The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs. The provision of this section shall not apply to costs incurred pursuant to Article VI, Section 18.

Sec. 30. The proportion of total state spending paid to all units of Local Government, taken as a group, shall not be reduced below that proportion in effect in fiscal year 1978-79.

Sec. 31. Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of the majority of the qualified electors of that unit of Local Government voting thereon. If the definition of the base of an existing tax is broadened, the maximum authorized rate of taxation on the new base in each unit of Local Government shall be reduced to yield the same estimated gross revenue as on the prior base. If the assessed valuation of property is fairly equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the General Price Level from the previous year, the maximum authorized rate applied therein in each unit of Local Government shall be reduced to yield the same gross revenue from existing property, adjusted for changes in the General Price Level, as could have been realized at the existing authorized rate on the prior assessed value.

The limitations of the section shall not apply to taxes imposed for the payment of principal and interest on bonds or other evidence of indebtedness or for the payment of assessments on contract obligations in anticipation of which bonds are issued which were authorized prior to the effective date of this amendment.

Sec. 32. Any taxpayer of the state shall have standing to bring suit in the Michigan State Court of Appeals to enforce the provisions of Sections 25 through 31, inclusive, of this Article and, if the suit is sustained, shall receive from the applicable unit of government his costs incurred in maintaining such suit.

Sec. 33. Definitions. The definitions of this section shall apply to Section 25 through 32 of Article IX, inclusive.

"Total State Revenue" includes all general and special revenues, excluding federal aid, as defined in the budget message of the governor for fiscal year 1978-1979. Total State Revenue shall exclude the amount of any credits based on actual tax liabilities or the imputed tax components of rental payments; but shall include the amount of any credits not related to actual tax liabilities. "Personal Income of Michigan" is the total income received by persons in Michigan from all sources, as defined and officially reported by the United States Department of Commerce or its successor agency. "Local Government" means any political subdivision of the state, including, but not restricted to, school districts, cities, villages, townships, charter townships, counties, charter counties, authorities created by the state, and authorities created by other units of local government. "General Price Level" means the Consumer Price Index for the United States as defined and officially reported by the United States Department of Labor or its successor agency.

Sec. 34. The Legislature shall implement the provisions of Sections 25 through 33, inclusive, of this Article.

Section 6. (New language capitalized) Except as otherwise provided in this constitution, the total amount of general ad valorem taxes imposed upon real and tangible personal property for all purposes in any one year shall not exceed 15 mills on each dollar of the assessed valuation of property as finally equalized. Under procedures provided by law, which shall guarantee the right of initiative, separate tax limitations for any county and for the township and for school districts therein, the aggregate of which shall not exceed 18 mills on each dollar of such valuation, may be adopted and thereafter altered by the vote of a majority of the qualified electors of such county voting thereon, in lieu of the limitation hereinafter established. These limitations may be merged to an aggregate of not to exceed 30 mills on each dollar of valuation, for a period of not to exceed 20 years at any one time, if approved by a majority of the electors, qualified under Section 6 of Article II of this constitution, voting on the question.

The foregoing limitations shall not apply to taxes imposed for the payment of principal and interest on bonds APPROVED BY THE ELECTORS or other evidence of indebtedness APPROVED BY THE ELECTORS or for the payment of assessments or contract obligations in anticipation of which bonds are issued APPROVED BY THE ELECTORS, which taxes may be imposed without limitation as to rate or amount, OR SUBJECT TO THE PROVISIONS OF SECTIONS 25 THROUGH 34 OF THIS ARTICLE, to taxes imposed for any other purpose by any city, village, charter county, charter township, charter authority or other authority, the tax limitations of which are provided by charter or by general law.

In any school district which extends into two or more counties, property taxes at the highest rate available in the county which contains the greatest part of the area of the district may be imposed and collected for school purposes throughout the district.

PROVISIONS OF EXISTING CONSTITUTION ALTERED OR ABROGATED BY THIS AMENDMENT BY ADOPTED ARTICLE IX, SECTION 6 -

Section 6. Except as otherwise provided in this constitution, the total amount of general ad valorem taxes imposed upon real and tangible personal property for all purposes in any one year shall not exceed 15 mills on each dollar of the assessed valuation of property as finally equalized. Under procedures provided by law, which shall guarantee the right of initiative, separate tax limitations for any county and for the township and for school districts therein, the aggregate of which shall not exceed 18 mills on each dollar of such valuation, may be adopted and thereafter altered by the vote of a majority of the qualified electors of such county voting thereon, in lieu of the limitation hereinafter established. These limitations may be merged to an aggregate of not to exceed 30 mills on each dollar of valuation, for a period of not to exceed 20 years at any one time, if approved by a majority of the electors, qualified under Section 6 of Article II of this constitution, voting on the question.

The foregoing limitations shall not apply to taxes imposed for the payment of principal and interest on bonds or other evidence of indebtedness or for the payment of assessments or contract obligations in anticipation of which bonds are issued, which taxes may be imposed without limitation as to rate or amount, or to taxes imposed for any other purpose by the city, village, charter county, charter township, charter authority or other authority, the tax limitations of which are provided by charter or by general law.

In any school district which extends into two or more counties, property taxes at the highest rate available in the county which contains the greatest part of the area of the district may be imposed and collected for school purposes throughout the district.

Michigan Needs



A Limit On Taxes

Vote YES
PROPOSAL
E

Make It
Happen

Q What is Taxpayers United doing to bring about tax limitation in Michigan?

A Taxpayers United staged a campaign to amend the Michigan Constitution by obtaining 466,000 signatures of qualified voters to get the amendment on the November, 1978 ballot and now by campaigning for its adoption.

Q Who is behind this drive for tax limitation?

A Retirees, housewives, farmers, factory workers, professionals, a broad spectrum of men and women. Many members of the Michigan Legislature endorse this campaign. Democrats, Republicans, and Independents support this effort.

Q Who is financing this campaign?

A Taxpayers United receives contributions from all walks of life. From just a few dollars to many hundreds of dollars. We are seeking 100,000 concerned taxpayers to contribute a minimum of \$5 each. You can help! Send a check to Taxpayers United For Tax Limitation.

Q What can I do to help?

A Get involved. Become familiar with the issues involved and let your friends and neighbors know what's really at stake. Their right to have a strong voice in the setting of tax rates in Michigan. Above all, in November, vote YES to the tax limitation Proposal E.

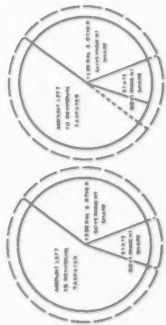
Paid for by:
Taxpayers United For Tax Limitation
P.O. Box 5060
Southfield, MI 48037
Phone (313) 358-1978

Co-Chairpersons:
Jeffrey M. Leib, Thomas H. Ritter,
Mrs. Vickie St. Louis, Jay VanAndel;
Treasurer: James Barrett.

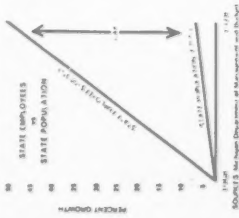
Sponsored by:
Taxpayers United, Inc.
Richard H. Headlee, Chairman
William Hanson, Executive Director

Q What is meant by tax limitation?

A By an amendment to the Michigan Constitution, a limit will be placed upon the ability of the legislature to increase state taxes beyond their current share of the Michigan economic pie. Future tax revenues would be tied directly to the total personal income of



the people. As the economy expands and personal income grows, the legislature would have more money to work with, but state government could not enlarge its slice of the economic pie without voter approval.

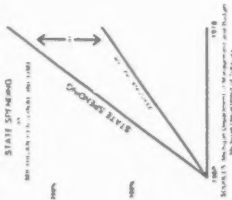


Q Why is tax limitation needed?

A Government is out of control. The number of state government employees grew in the past ten years by 50.5 percent while the state population during the same ten years increased by only 6.7 percent. Most taxpayers have not received that kind of increased service, and have certainly not voted for it.

In the past ten years, state spending increased by 235 percent, almost double the

growth in the overall personal income of the people of Michigan. For every dollar of your



money that state spent in 1968, it is now spending \$3.50.

Government is spending more and more, and the taxpayer is left with less and less. At the present time, the taxpayer has no direct control.

Q What will be the main effect of tax limitation?

A Tax limitation will stabilize the size of state government in relation to the overall state economy, permitting expansion only with the taxpayers' approval (expressed through their vote) or economic growth to pay for the expansion.

Q Why shouldn't state government continue to increase its share of the economy?

A The economic pie is only so big! To permit growth other than through an expanded economy places undue hardship on the individual taxpayer's family budget. The individual, after all, pays all the taxes. Businesses, utilities, banks and others who pay "business taxes" simply build those taxes into their prices and collect them from their customers, and pass the revenues on to the government. Ultimately, the individual pays for everything. Continuous enlargement of the government's share of personal income forces families to cut back further in their budgets for food, clothing, shelter, utilities, medical care, transportation and other personal spending (if any is possible). If the government keeps enlarging its share, it leaves the taxpayer less and less.

Q How would tax limitation stop continuous property tax increases?

A If a taxing unit (community) has an assessed value of \$20 million and the voters approved a tax levy of 40 mills, property taxes are currently \$600,000. If the assessed value of the unit is raised to \$30 million (through State Equalized Valuation monies) raising taxes to \$900,000 (.30 mills x \$30 million), the approved tax millage would be rolled back to 20 mills to yield the same \$600,000 as before. An additional millage is authorized to meet the cost of inflation as reflected by the Consumer Price Index of the U.S. Department of Labor.

Q How would tax limitation work for you?

A By constitutional amendment, the legislature and the various local taxing bodies would be required to hold revenues to current levels in relation to personal income, unless an emergency should arise requiring special consideration or the people themselves appear to an increase in the tax rate.

Q Is there any other way to keep your taxes from rising faster and faster?

A Apparently not. Legislators and governors have been promising for years to control taxes yet taxes go up higher and higher. Many legislators have indicated that the tax limitation amendment would help them do their job better. It would require them to set priorities and would help them to resist demands for an endless list of new programs.

Q Would tax limitation strangle progressive government?

A No. Progressive government should mean efficiency, economy and establishing proper priorities. A limit on tax revenues will improve government by requiring careful study and evaluation of each proposed dollar of new spending.

Q How about emergencies? Legitimate new needs?

A It will provide for emergencies being met by establishing conditions when they may be exceeded. Should a real emergency arise, which cannot be met with current revenues,

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency professional association, disciplinary committee, or other professional group? If so, provide details.

No

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

No

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

In the ordinary course of doing business as an insurance company, lawsuits have been filed against Alexander Hamilton Life Insurance Company of America and by the Alexander Hamilton Life Insurance Company of America involving various aspects of the insurance business, but primarily involving insurance claims.

Woodward & McDowell vs. Richard Headlee for Governor Campaign, Richard Headlee, et al. #801-307 - Superior Court of State of California. Dismissed, March 14, 1983.

Stephanie Bass, et al. vs. State of Michigan, et al. Seeking to file an Amicus Curiae brief on behalf of the Plaintiff School District as an interested party and taxpayer.

In the ordinary course of the many diverse business Household Financial Services and its parent Household International may have had lawsuits filed against them or by them. Alexander Hamilton Life Insurance Company of America and I personally have not been a party to those suits, nor are privy to the facts involved in any litigation.

4. Have you ever been convicted (including pleas of guilty or nolocontendere) of any criminal violation other than a minor traffic offense?

No

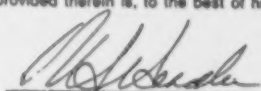
5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

E. FINANCIAL DATA

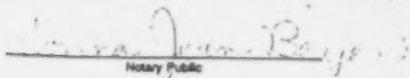
(information retained in Committee file)

AFFIDAVIT

_____ being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.



Subscribed and sworn before me this 3rd day of June 1988


Notary Public

PRE-HEARING QUESTIONS FOR RICHARD H. HEADLEE**I. NOMINATION PROCESS AND POTENTIAL CONFLICTS**

1. Were any conditions, express or implied, attached to your nomination for reappointment as a member of the Federal Retirement Thrift Investment Board?

Answer: No.

2. Have you made any specific commitments with respect to the basic policies and philosophy which you will follow while a Member of the Thrift Board?

Answer: No.

3. To your knowledge, did persons representing interests that could be influenced by the Thrift (sic) actively support or endorse your reappointment? If so, please explain.

Answer: No.

4. Is there any issue currently under consideration by the Thrift Board, or any which may come under consideration, from which you may have to disqualify yourself? Have there been any such issues during your service on the Thrift Board? If so, please explain.

Answer: None.

5. Do you have any interest in any corporation, partnership, association, or other entity whose interest may be affected significantly by the Board?

Answer: No.

**II. ROLE AND RESPONSIBILITIES OF THE POSITION TO WHICH
NOMINATED**

1. What do you believe are the most important responsibilities of the position to which you are nominated and what challenges do you expect to face?

Answer: General oversight. Insure that optimum number of federal employees understand the program, and that programs and monies are well managed.

2. What contributions do you feel you can make to the Thrift Board as one of its Members?

Answer: As Chairman of a 2½ billion dollar life company, my experience is generally focused toward understanding of pension and savings programs.(i.e. 401k)

III. ROLE OF THE THRIFT BOARD

1. How do you view the role and responsibilities of the Thrift Board?

Answer: General oversight. Insure that optimum number of federal employees understand the program and that program and monies are well managed.

2. The Thrift Board is an independent agency. What do you consider to be the proper relationship between the Board and the President and the Congress?

Answer: See that program functions on behalf of employees as intended.

3. On what model do you think the Board should operate — a private pension plan or a federal agency model? On what statutory basis do you base your view of the function of the Board.

Answer: (5 U.S.C. # 8472 (a)) A Federal Agency subject to Congressional oversight. We are similar to a 401 k Plan with fiduciary responsibilities (5 U.S.C. # 8477).

4. How do you view the current statutory division of responsibilities between the Board members, as policy-makers, and the Executive Director, the chief executive officer of the agency?

Answer: Board sets policy. Executive Director carries out on day to day basis.

A. Do you consider the Executive Director to be accountable to the Board Members for his actions and decisions?

Answer: Yes.

B. Should there be oversight or reporting mechanisms available to the Board Members to keep them apprised of, or to allow evaluation of, actions or decisions taken by the Executive Director?

Answer: We have reports and regular review meetings.

C. During your tenure as a member of the Thrift Board, have performance standards for the Executive Director been established and has the performance of the Executive Director been evaluated by the Board Members?

Answer: Goals have been set, deadlines established, and the Executive Director has made certain they were met.

5. Should Board members have any management responsibilities in addition to their policy-making duties?

Answer: Not as a practice. From time to time specific support may be given to the Executive Director by Board Members with unique background or experience.

6. As a member of the Board, have you been consulted in establishing the agenda of Board meetings or in establishing Board policies? Do you view these as legitimate functions of Board Members under the statute?

Answers: Yes. Yes.

7. Has the Board established a long-term planning policy or strategy? Do you consider such a long-term policy for the Board to be required by the statute?

Answer: Yes, and as we effectively implement startup programs this will happen. It is implied as prudent management practice.

8. Do you believe the current funding system is adequate?

Answer: Yes.

Are there any changes you would like to see made?

Answer: No.

9. What actions have you taken, or plan to take, to increase the number of federal employees who participate in the FERS program?

Answer: We have encouraged research to evaluate initial penetration results. Marketing programs should be designed to respond to research results. I have been a most vocal advocate of seeing that we reach to the lowest levels with effective orientation.

IV. OPERATIONS OF THE THRIFT BOARD

1. How would you describe the functions of the Thrift Board?

Answer: To operate an accurate, efficient thrift saving plan on behalf of federal employees, providing them with maximum returns and flexibility under the enabling statute.

2. Are there any steps or improvements you would like to see undertaken to make the operations of the Board more effective?

Answer: Not at this time.

3. Do you question the need for any services currently provided by the Board?

Answer: No.

V. RELATIONS WITH CONGRESS

1. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

Answer: Yes.

2. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

Answer: Yes.

FEDERAL RETIREMENT
THRIFT INVESTMENT BOARD
805 Fifteenth Street, N.W.
Washington, D.C. 20005

FOR RELEASE ON DELIVERY
Expected at 10:00 a.m. EDT
June 24, 1988

STATEMENT BY ROGER W. MEHLE
CHAIRMAN, FEDERAL RETIREMENT THRIFT INVESTMENT BOARD
BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
WASHINGTON, D.C., JUNE 24, 1988

Mr. Chairman and Members of the Committee:

I am pleased to appear before your Committee today as the President's nominee for reappointment as Chairman of the Federal Retirement Thrift Investment Board.

In the 21 months since my initial appointment on October 1, 1986, the Board, and the Thrift Savings Plan which it administers under the Federal Employees' Retirement System Act of 1986, have been well established. All major programs required by the Act have been developed, and all major service contracts--for recordkeeping, asset management, annuities, and auditing--have been completed.

-- Nearly 1.2 million individual accounts have been created for participants in the Thrift Savings Plan, making it the largest thrift plan in the Nation.

-- The three investment funds required by the Act--the Government Securities "G Fund", the Common Stock "C Fund", and the Fixed Income "F Fund"--are fully established, with combined investments of over \$1.7 billion.

-- Withdrawal systems for employees leaving Government service are in place, including programs for cash payments, annuities, and transfers to other eligible retirement plans.

-- The loan programs are operational, with further enhancements planned for later this year.

-- Communications systems with all eligible participants, and with their agencies, are well established.

It has been a great honor and pleasure to have participated in the implementation of such an important piece of legislation, and I welcome the opportunity to be of continued service.

1. Name: (Include any former names used.)

Roger William Mehle

2. Position to which nominated:

Chairman, Federal Retirement Thrift Investment Board

3. Date of nomination:

March 23, 1988

4. Address: (List current place of residence and office addresses.)

507 Constitution Avenue, N.E., Washington, D.C.)
)-- Home

310 East 70th Street, New York, New York 10021)
Royer, Shacknai & Mehle, 1747 Pennsylvania Ave., N.W.)
Washington, D.C. 20006)-- Office

5. Date and place of birth:

December 28, 1941 Long Beach, California

6. Marital status: (Include maiden name of wife or husband's name.)

Single

7. Names and ages of children:

None

8. Education: List secondary and higher education institutions, dates attended, degree received and date degree granted.

<u>Institution</u>	<u>Dates Attended</u>	<u>Degree</u>	<u>Date of Degree</u>
Georgetown Preparatory School Rockville, Maryland	1953-1959	H.S. Diploma	1959
U.S. Naval Academy Annapolis, Maryland	1959-1963	B.S.	1963
New York University Graduate School of Business Administration New York, New York	1970-72	M.B.A.	1972
Fordham University School of Law New York, New York	1972-1976	J.D.	1976

9. Employment record: List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.

<u>Employment Description</u>	<u>Employer</u>	<u>Location</u>	<u>Employment Dates</u>
Naval Officer	U.S. Navy	Various Atlantic Fleet Duty Stations	1963-1969
Investment Banker	The First Boston Corp.	New York, NY	1969-1979
Investment Banker	Dean Witter Reynolds, Inc.	New York, NY	1979-1981
Government Official (Assistant Secretary of the Treasury - Domestic Finance)	U.S. Government	Washington, DC	1981-1983
Investment Banker	PaineWebber, Inc.	New York, NY	1983-1984
Attorney	Self-Employed	Washington, DC	1984-present

10. Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.

Chairman, Federal Retirement Thrift Investment Board, 1986 to present.

11. Business relationships: List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

<u>Position</u>	<u>Organization</u>	<u>Dates</u>
Assistant Vice Pres. Vice President Senior Vice Pres. Managing Director	The First Boston Corp.	1969-1979
Senior Vice Pres. and Director	Dean Witter Reynolds, Inc.	1979-1981
Executive Vice Pres. and Managing Director	PaineWebber, Inc.	1983-1984
Partner	Royer, Shacknai & Mehle	1984-present
Director	New York Shakespeare Festival	1978-present
Director	New York Grand Opera	1981-present
Director	Washington Opera	1985-present
Director	New York Graduate School of Business Administra- tion Alumni Association	1986-present

12. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.

Member, New York Bar; U.S. District Court of the Southern District of New York; U.S. Court of Appeals for the D.C. Circuit; U.S. Court of Appeals for the 2nd Circuit; U.S. Supreme Court.

13. Political affiliations and activities:

- (a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

- (b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Member, New York Volunteers for Reagan-Bush, 1983 to 1984.

- (c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years.

Have given between \$250 to \$1,500, in the aggregate, annually to the Republican National Committee and various Republican Congressional and Presidential candidates.

14. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievement.

Beta Gamma Sigma - Honorary Business School fraternity. Recipient of the Alexander Hamilton Award "for outstanding and unusual leadership" from the Secretary of the Treasury for service as Assistant Secretary for Domestic Finance during 1981-1983.

15. Published writings: List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

Bank Underwriting of Municipal Revenue Bonds: Providing Free and Fair Competition, Syracuse Law Review, Fall, 1975.

16. Speeches: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

None.

17. Selection:

- (a) Do you know why you were chosen for this nomination by the President?

Presumably because of prior satisfactory service in this position.

- (b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

Work experience in the securities industry, the Treasury Department and the legal profession.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

No; this is a part-time position.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

Yes; this is a part-time position.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

Not applicable; this is a part-time position.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

Not applicable; this is a part-time position.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

I receive compensation for services rendered to clients as an attorney; since this is a part-time position I will continue to do so.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

None

3. Describe any business relationships, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

a) While Assistant Secretary of the Treasury from 1981 to 1983, I frequently testified and otherwise dealt with Members of Congress and their staffs on legislative initiatives regarding banking and financial matters.

b) As Chairman of the Federal Retirement Thrift Investment Board, I have frequently discussed legislative initiatives for the agency with Members of Congress and their staffs.

c) As Chairman of the Municipal Finance Committee of the Securities Industry Association in 1979, I frequently discussed legislative initiatives of interest to the securities industry with Members of Congress and their staffs.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

Not applicable.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

D. LEGAL MATTERS

1. Have you even been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional groups? If so, provide details.

No.

2. Have you even been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

No.

3. Have you or any business of which you are or were an officer even been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

None in which I was ever involved, although the major corporations of which I was an officer were involved in many civil actions and administrative agency proceedings.

4. Have you even been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?

No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None.

E. FINANCIAL DATA

(information retained in Committee file)

AFFIDAVIT

Roger W. Mehle, being duly sworn, hereby states that he has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his knowledge, current, accurate, and complete.

Roger W. Mehle

Subscribed and sworn before me this 10th day of May, 1988.

Richard A. Latis
Notary Public District of Columbia

My Commission Expires January 16, 1990

PRE-HEARING QUESTIONS FOR ROGER W. MEHLE

I. NOMINATION PROCESS AND POTENTIAL CONFLICTS

1. Were any conditions, express or implied, attached to your nomination for reappointment as a member of the Federal Retirement Thrift Investment Board?

Answer: No.

2. Have you made any specific commitments with respect to the basic policies and philosophy which you will follow while a Member of the Thrift Board?

Answer: No.

3. To your knowledge, did persons representing interests that could be influenced by the Thrift [sic] actively support or endorse your reappointment? If so, please explain.

Answer: No.

4. Is there any issue currently under consideration by the Thrift Board, or any which may come under consideration, from which you may have to disqualify yourself? Have there been any such issues during your service on the Thrift Board? If so, please explain.

Answer: Not to my knowledge.

5. Do you have any interest in any corporation, partnership, association, or other entity whose interest may be affected significantly by the Board?

Answer: No.

II. ROLE AND RESPONSIBILITIES OF THE POSITION TO WHICH
NOMINATED

1. What do you believe are the most important responsibilities of the position to which you are nominated and what challenges do you expect to face?

Answer: The most important responsibilities are to act solely in the interests of the participants and beneficiaries of the Thrift Savings Plan and to maintain the independence of the Board to serve those interests. The greatest challenges are likely to be maintaining the

confidence and trust of Federal employees to help them realize the full benefits of the Thrift Savings Plan.

2. What contributions do you feel you can make to the Thrift Board as one of its Members?

Answer: I feel that my extensive background in private investment banking, and as a senior Treasury official, and my service as Chairman of the Board since October 1986, enable me to make an effective contribution to the development of investment and other policies for the Government's Thrift Savings Plan.

III. ROLE OF THE THRIFT BOARD

1. How do you view the role and responsibilities of the Thrift Board?

Answer: The members of the Thrift Board must, by law, be expert in the management of investment and pension funds, and their role and responsibilities under the statute are primarily to establish overall policies for the investments and administration of the Thrift Savings Plan.

2. The Thrift Board is an independent agency. What do you consider to be the proper relationship between the Board and the President and the Congress?

Answer: Unlike other similar plans, such as corporate 401(k) plans which operate under a plan document of their own creation, the Board's "plan document" is the Pub. L. 99-335, the Federal Employees' Retirement System Act of 1986 (FERSA), as amended. While the Board is a financially independent policy making body, it is completely dependent upon the cooperation of all Federal agencies, who have direct responsibilities under FERSA for the implementation of the Thrift Savings Plan and the policies of the Board. Thus the Board must work in close cooperation with the Administration and the oversight committees of the Congress to develop and maintain the communications and consensus essential to the success of the Plan.

3. On what model do you think the Board should operate -- a private pension plan or a Federal agency model? On what statutory basis do you base your view of the function of the Board?

Answer: The Board cannot follow precisely either the private pension plan or the Federal agency model. The Board is a unique institution under FERSA. While it

is clearly a Federal agency (5 U.S.C. § 8472(a)) and is subject to the usual civil service, procurement, public service, and other requirements, to the extent not inconsistent with FERSA, it is unique among Federal agencies in that it has fiduciary responsibilities (5 U.S.C. § 8477), like a 401(k) plan, that require it to act solely in the interests of the participants and beneficiaries of the Thrift Savings Plan (5 U.S.C. § 8477(b)(1)). Since FERSA is clear with respect to the unique responsibilities of the Board, I see no fundamental conflict between the Board's role as a Federal agency and its fiduciary responsibilities to the Plan participants it is required to serve.

4. How do you view the current statutory division of responsibilities between the Board members, as policy-makers, and the Executive Director, the chief executive officer of the agency?

Answer: Section 5 U.S.C. § 8472 states the general responsibilities of the members of the Board, and 5 U.S.C. § 8474 states the general responsibilities of the Executive Director. Other parts of FERSA give additional specific responsibilities to the members or the Executive Director. It is clear that Congress intended that the Board have a general policy oversight responsibility and that the Executive Director have responsibility for the day-to-day management of the Plan. This is particularly appropriate in view of the part-time nature of the Board members' service.

This division of responsibilities under FERSA does not mean that the five Board members and the Executive Director have no responsibilities for each other's actions. All six are named as fiduciaries in FERSA and thus have co-fiduciary responsibilities as described in the statute (5 U.S.C. § 8477(3)(1)(D)). For example, while the Executive Director is responsible for all procurements of outside services (pursuant to criteria established by Board members), including asset managers as well as suppliers of equipment, materials, and consulting services--and the Board members are unaware of the identity of the vendors until they are chosen and announced by the Executive Director--if a Board member is subsequently made aware that a contract was improperly granted or is improperly administered, the member has a co-fiduciary responsibility to take appropriate action in the interests of the participants and beneficiaries of the Plan. Similarly, if the Executive Director finds that, e.g., an investment policy adopted by the Board is not serving the best interests of the participants and beneficiaries, he has a co-fiduciary responsibility to take appropriate

action. While the appropriate co-fiduciary actions will depend upon the facts and circumstances at the time, all six of the fiduciaries are required by FERSA to be expert and experienced in the management of investments and pension funds, and they are accountable as such to act as prudent experts in exercising both their fiduciary and co-fiduciary responsibilities.

A. Do you consider the Executive Director to be accountable to the Board Members for his actions and decisions?

Answer: Yes. While the Executive Director has direct statutory responsibility for certain of his actions, he is also accountable to the Board for his actions and decisions. While he is empowered by FERSA to take certain actions without Board approval he must ultimately be accountable to the Board for such actions in order to permit the Board to exercise its co-fiduciary responsibilities. However, the Executive Director may not be removed except by the concurring vote of four Board members for good cause shown (5 U.S.C. § 8472(g)(1)(c)).

B. Should there be oversight or reporting mechanisms available to the Board Members to keep them apprised of, or to allow evaluation of, actions or decisions taken by the Executive Director?

Answer: Yes. Since its inception in October 1986, the Board has received full reports from the Executive Director, both at the monthly meetings of the Board and in written reports and materials sent to Board members by the Executive Director several times a month. The Executive Director is responsible for keeping Board members fully informed, and the Board members are responsible for keeping informed by reviewing the materials presented by the Executive Director and requesting additional information, should it be required.

C. During your tenure as Chairman of the Thrift Board, have performance standards for the Executive Director been established and has the performance of the Executive Director been evaluated by the Board Members?

Answer: The performance standards of the Executive Director are not established by the Board but are established in FERSA and, in some respects, in other relevant statutes, including the civil service, procurement, and ethics statutes. The Board has evaluated the performance of the Executive Director on a continuing basis, as he presents policy recommendations, reports,

publications, and other materials, and as the Board reviews the effectiveness of programs put in place. The position of the Executive Director is established by FERSA at Executive Level III, which is the level of Under Secretaries of Cabinet agencies. It is not customary to establish performance standards for executives at such levels but to judge their performance in terms of their actions and accomplishments. Moreover, while Under Secretaries and other sub-cabinet appointees generally have authority delegated by agency heads who must retain statutory responsibilities, the Executive Director has direct statutory responsibilities under FERSA, and it would not be appropriate for the Board to establish standards in conflict with those responsibilities.

5. Should Board members have any management responsibilities in addition to their policy-making duties?

Answer: No. The Executive Director is clearly responsible under FERSA for the management of the Thrift Savings Plan. The Board has an oversight responsibility for the effective administration of the Plan but it should not become directly involved in day-to-day management activities. Such involvement would be particularly inappropriate for a part-time Board.

6. During your tenure as Chairman, have Board Members been consulted in establishing the agenda of Board meetings or in establishing Board policies? Do you view these as legitimate functions of the Board Members under the statute?

Answer: Yes, to both questions. Board members have been encouraged to submit agenda items and policy recommendations to the Executive Director, who presents a draft agenda and circulates any members' recommendations to all Board members in advance of each Board meeting. Any changes in the draft agenda suggested by a member are incorporated by the Executive Director in a revised agenda for consideration by the Board. Board policies are established only at meetings of the Board, at which all members are invited to participate in the policy establishment process. While the Chairman is responsible for calling meetings of the Board and presiding over such meetings, I believe that all members should have the opportunity to participate in decisions on both the timing of the meetings and the formulation of the agenda.

7. Has the Board established a long-term planning policy or strategy? Do you consider such a long-term policy for the Board to be required by the statute?

Answer: While FERSA does not specifically require the establishment of a long-term planning policy, such planning is an inherent responsibility of the Board and to date has been conducted largely in conjunction with the Board's statutory Budget approval function. The Board conducts a semiannual review of the Executive Director's proposed budget, which incorporates planning for all functions for the coming fiscal year.

The Board did not have the opportunity at its inception in October 1986 to develop long-term plans for the entire Thrift Savings Plan system, because FERSA required that the Thrift Savings Fund commence April 1, 1987. During that 6-month interval (private experts advised that a period of one to two years would normally be required), the Board appointed an Executive Director, who recruited staff, obtained offices, equipment and materials; contracted for recordkeeping services; established G Fund investment and contributions policies and procedures essential to commencing contributions and investments on April 1; and published its first open season booklet (summary plan description). After completing preparations for that first phase (contributions) of the Plan, the Board then focused on Phase II (withdrawals), then Phase III (loans and C and F Fund investment policies), and Phase IV (interfund transfers), to meet statutory deadlines in early 1988. Phase V, in late 1988, will include a thorough review of all system operations to ensure appropriate enhancements to operate the Plan effectively in the coming years.

8. Do you believe the current funding system is adequate? Are there any changes you would like to see made?

Answer: Yes, the current funding system is adequate, and I would not like to see it changed. In keeping with the independent nature of the Board and its fiduciary responsibilities to administer the Plan solely in the interests of the participants and beneficiaries, Congress wisely provided in FERSA for a permanent indefinite appropriation of monies in the Thrift Savings Fund to cover all expenditures of the Fund, including administrative expenses. The fiduciaries can be held fully accountable for their actions because they have full control over the funds. Congress recognized that all funds in the Thrift Savings Fund belong to the participants, not the Government, and should thus be controlled only by the six fiduciaries (the five Board members and the Executive Director) named in FERSA. This funding system is essential to maintain participant

confidence that their voluntary savings will not be subject to political or other priorities which might be imposed were the Fund subject to the usual budget-appropriations process of the President and the Congress.

Congress also provided safeguards to ensure appropriate accountability of the Board's actions; these include the provisions in FERSA relating to the role of the Secretary of Labor in establishing a program of fiduciary compliance audits, the role of a private accounting firm in conducting an annual audit of the Plan on the basis of generally accepted accounting principles, the role of the General Accounting Office regarding the deposit of agency contributions to the Plan, and the advisory role of the 14-member Employee Thrift Advisory Council, which represents the major unions and other employee organizations.

9. What actions have you taken, or plan to take, to increase the number of Federal employees who participate in the FERS program?

Answer: Participation in the FERS program, itself, is not within the control of the Board, since all employees hired since 1983 are automatically FERS employees. Also the limited period during which CSRS employees could switch to FERS (July-December 1987) has expired. All FERS employees have automatic contributions made on their behalf to TSP by their agency. The Board is, of course, committed to developing an attractive benefit program and a communications program to ensure that every employee, both CSRS and FERS, has the opportunity to realize, to the maximum extent, the Thrift Savings Plan benefits which Congress provided for in FERSA, which benefits increase as a result of increased employee contributions.

I feel that the Plan benefits developed by the Board, and our communications efforts to date, have been well received by Federal employees. Our four open season booklets have been distributed to all eligible employees and our special booklets on loans, annuities, and withdrawals have been widely distributed to all Federal agency personnel offices. We are now distributing an attractive leaflet, which briefly summarizes the Plan benefits, to the FERS employees who, for one reason or another, are currently not contributing to the Plan. We have also worked closely with agency personnel officers in extensive meetings and in distribution of materials to assist them in their communications efforts. Finally, we conducted an extensive survey of Federal employee attitudes toward the Thrift Savings Plan and shared the

results of that survey with the heads of all agencies to assist them in their efforts to encourage employee participation in the Plan.

The response by FERS employees has been gratifying--approximately 45 percent elected to contribute to the Plan during its first year of operation, which we understand to be a very favorable participation rate compared to the experience of other similar plans during their initial stages. We will continue to make every effort to educate employees as to the Plan benefits, and we are confident that participation in the Plan will continue to increase as the Plan develops and as employee understanding of the Plan increases.

IV. OPERATIONS OF THE THRIFT BOARD *

1. How would you describe the functions of the Thrift Board?

Answer: The broad functions of the Board are to establish and manage a Thrift Savings Plan for all Federal employees and to do so prudently and solely in the interests of the participants and beneficiaries of the Plan. The specific major functions of the Board are recordkeeping, investments, benefits administration, and communications. These four major functions are supported by four staff offices dedicated to these specific areas and by four other staff offices providing needed services in the areas of law, accounting, administration, and external affairs. The Board is a relatively small agency, especially for so large a thrift plan, and most of its operating functions are carried out by the thousands of personnel, payroll and systems offices of the Federal Government throughout the world as well as by our major contractors for recordkeeping services, asset management and annuities. Thus, the Board is essentially a policymaking and management body which is responsible for procuring essential financial and operational services and supervising the provision of such services.

* These questions on the operations of the Board appear to relate to the Board as an agency rather than to the members of the Board themselves, and have been answered accordingly.

2. Are there any steps or improvements you would like to see undertaken to make the operations of the Board more effective?

Answer: The 100th Congress has been most supportive of the Board in enacting amendments to FERSA which greatly improved Board operations, particularly with respect to the elimination of nondiscrimination testing requirements, the strengthening of financial protection for fiduciaries, and the exemption of the Thrift Savings Fund from the potential adverse effects of the public debt limit. These, and numerous other technical amendments, have enabled the Board to establish and conduct a highly effective program. As the program develops, the Board will undoubtedly see the need for further technical amendments to improve the Plan, but I do not see a need at this time for changes in the basic structure of the Plan.

3. Do you question the need for any services currently provided by the Board?

Answer: No. All services currently provided by the Board are essential to the effective operation of a tax-deferred Thrift Savings Plan and were apparently well developed by Congress, with assistance from private experts, during the several years that FERSA was under consideration.

V. RELATIONS WITH CONGRESS

1. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

Answer: Yes.

2. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

Answer: Yes.

ONE HUNDREDETH CONGRESS

WILLIAM D. FORD, MICHIGAN, CHAIRMAN

WILLIAM BRILL CLAY MISSOURI
PATRICIA SCHROEDER COLORADO
STEPHEN J. SOLARZ NEW YORK
ROBERT GARCIA NEW YORK
MICKEY LELAND TEXAS
GUS YATTON PENNSYLVANIA
MARY ROSE GAZAR OHIO
GERRY GEORGE MINNESOTA
FRANK McCLOSKEY IOWA
GARY L. ACKERMAN NEW YORK
MARTIN W. O'DONNELL CALIFORNIA
MURRAY A. UDALL ARIZONA
RON W. LUED VIRGIN ISLANDS

GONE TAYLOR MISSOURI
BERNARD A. OLIVARI NEW YORK
CHARLES FERNSTEIN, JR. CALIFORNIA
FRANK HORTON NEW YORK
JOHN T. MYERS INDIANA
DON YOUNG ALASKA
DAN BURTON INDIANA
CONSTANCE A. MORGILL MARYLAND

House of Representatives**Committee on Post Office
and Civil Service**

Washington, DC 20515

TELEPHONE (202) 225-4054
June 21, 1988

The Honorable John Glenn
Chairman
Committee on Governmental Affairs
Washington, D.C. 20510

Dear Senator Glenn:

I understand that the Committee on Governmental Affairs has before it for consideration nominations to the Federal Retirement Thrift Investment Board.

As you know, Congress when it enacted P.L. 99-335 created this board to manage and invest the resources of the Thrift Savings Fund.

The Committee on Post Office and Civil Service exercises oversight jurisdiction of the Federal Employees' Retirement System and therefore has closely monitored the implementation and operation of the Thrift Savings Plan under the direction of Executive Director, Frank Cavanaugh and Chairman Roger Mehle. I am pleased to share with you my evaluation of their stewardship.

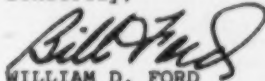
The Board has kept this Committee fully apprised of all significant developments and issues and has done an exceptionally good job of implementing the Thrift Savings Plan.

Under Chairman Roger Mehle, the Board has met all the significant milestones mandated by P.L. 99-335 despite being under a very difficult timetable.

I would appreciate your inclusion of this letter in the record of the Committee's confirmation hearings.

With kind regards,

Sincerely,



WILLIAM D. FORD
Chairman

WDF:tdf

cc: Senator David Pryor
Senator Ted Stevens

Francis J. Conners
Executive Vice President
Lawrence G. Hutchins
Vice President
Richard P. O'Connell
Secretary-Treasurer
Malline Overby
Asst. Secretary-Treasurer
Brian D. Farris
Director, City Delivery
George Davis, Jr.
Director, Safety & Health



100 Indiana Avenue, N.W. Washington, D.C. 20001
Telephone: (202) 393-4695

William M. Dunn, Jr.
Director, Life Insurance
Robert Vincenzi
Director, Health Insurance
Watts, E. Couillard
Director of Retired Members
BOARD OF TRUSTEES
James G. Souza, Jr.
James Worsham
Michael J. O'Connor

June 23, 1988

Honorable John Glenn
Chairman
Committee on Governmental Affairs
United States Senate
340 Senate Dirksen Building
Washington, D.C. 20510

Dear Chairman Glenn:

On June 24, 1988 your Committee will hold hearings on the nominations of individuals to serve as members of the Federal Retirement Thrift Investment Board. As Chairman of the Employee Thrift Advisory Council, which represents over 2 1/2 million current or former federal and postal employees, I believe this to be an appropriate time to comment on the Thrift Board's performance since its creation nearly two years ago. However, in doing so, I speak only for my organization, the National Association of Letter Carriers, and not necessarily for the 13 other organizations that make up the Council.

I wish to commend the Federal Retirement Thrift Investment Board for the fine job it has done in implementing and operating the Thrift Savings Plan (TSP). The TSP has grown significantly over the past year and now has over 1 million accounts and nearly \$1.8 billion in assets. This growth is a sign of the TSP's popularity among federal and postal employees and indicates the high degree of confidence such employees have in the Plan.

There have been problems from time to time with the TSP, as in any new venture. Nevertheless, the Employee Thrift Advisory Council enjoys a good working relationship with the Board. The Board's Executive Director, Francis X. Cavanaugh, has been conscientious in providing the Council with all relevant information about the TSP and in answering our questions. He has also used our suggestions to improve the TSP's operations and considered our input at each phase of the TSP's implementation. I look forward to working with him, the current members, and any new members of the Federal Retirement Thrift Investment Board in the future.

Sincerely,

Vincent R. Sombrotto
VINCENT R. SOMBROTTO
PRESIDENT

TESTIMONY

before the
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

Hearing on the Nomination of Roger W. Mehle

by
Robert A. G. Monks
Member, Federal Retirement Thrift Investment Board

My name is Robert A. G. Monks, and I have served as a Member of the Federal Retirement Thrift Investment Board (TIB) since December of 1986. I am grateful for the opportunity to appear before you today, to give you my comments on the nomination of Roger Mehle as Chairman of TIB.

I am here today to talk about one subject--Roger Mehle's fitness to continue as Chairman of TIB. Based on my experience as a fellow Board Member for 18 months, my conclusion is that he is not fit to continue in that position. I want to emphasize at the outset that my view is not based on disagreements that he has had with me or with the other Members of the Board on policies, priorities, and interpretations of the Federal Employees Retirement System Act (FERSA). Those are expected--even welcomed--at a board composed of people with such diverse perspectives. Indeed, that is the reason for having a Board, instead of a single head of the agency. My view on Chairman Mehle's unfitness for this position is based on his unwillingness or inability to act as a leader to forge consensus from these perspectives, and his continual thwarting of our efforts to meet our responsibilities as fiduciaries. Chairman Mehle's conduct

has been obfuscatory and obstructionist, disorganized and disruptive. His term has been characterized by secret meetings and broken commitments. I do not believe that he has shown the qualities necessary for fiduciary stewardship of what promises to become the largest accumulation of investment capital in the world, the retirement fund for government workers.

I am sympathetic to the problem imposed by the very tight deadlines imposed by the statute, and I know that sometimes it is necessary to act without the luxury of considered analysis. But Chairman Mehle's tactics resulted in delays in meeting important goals, and his shortcuts resulted in long-term--perhaps permanent--damage to the program's ability to serve its constituency.

My time is limited today, so I will summarize my concerns quickly, to leave time to answer questions. I do have extensive documentation of these points and more, which I would be happy to provide for the record. My concerns can be divided into three overlapping categories: lack of leadership, failure to address policy issues, and failure to permit oversight of the Executive Director. Through all of these issues, there is a common theme--Roger Mehle will not enter into any discussion of the issues. Over and over again, he has refused to permit debate of the merits of any issue, which has made it impossible for the Board to meet its obligations as fiduciaries. Virtually none of the

suggestions from other Members of the Board have ever been implemented, notwithstanding commitments to do so, or agreed-upon deadlines. Those that allegedly have been implemented have been so distorted as to be unrecognizable.

1. Lack of Leadership

TIB is unlike any other multi-headed agency, as far as I know. The Members of TIB, including the Chairman, are jointly and severally liable for any breach of fiduciary duty. Therefore, any act taken by any one of them is viewed as if it was taken by all of them. I was advised by Robert Bloom, General Counsel of TIB, that even voting against an imprudent action would not shield a Member from this liability. If the action was approved by a majority of the Board, and then taken, even the minority Members would be held accountable. For that reason, it is especially important that the Chairman play a leadership role, working with the other Members to build consensus. Chairman Mehle has never made any effort at leadership, and has thwarted every effort at consensus. Despite the fact that the other Members are bound by and liable for his actions, he has operated in secret, meeting with TIB staff without informing the other Members of the existence of the meetings, much less their content and result. On the other hand, he has consistently refused to meet with the other Members.

He has also, contrary to his answers to the pre-hearing questions, refused to put on the agenda items submitted by the other Members. In February 1988, when Shannon Clyne forwarded copies of resolutions that he proposed to submit at the next Board meeting, Chairman Mehle would not allow them to be presented or even give him the courtesy of a direct response. Instead, and without notifying Mr. Clyne or the other Members, Chairman Mehle worked with TIB and Congressional staff to undercut the proposals. In March of 1987, I gave Chairman Mehle a short list of policy issues for the agenda (see Exhibit A). He did not put them on the agenda or state any reason for refusing to do so. After he refused to permit my items on the agenda, and refused to meet with me, and after I was told that Board counsel could not advise me on my responsibilities as a Member, I joined with two other Members to retain outside counsel to ask for a meeting. He still refused. I raise this not to discuss the merits of that action, which are outside the scope of today's hearings, but to show the magnitude of frustration felt by a majority of Board Members, due to Chairman Mehle's unwillingness to communicate with us.

The statute recognizes the equal status of all Members in granting to the Chairman only two special powers: the authority to name the members of the Advisory Council and the authority to call special meetings. Despite repeated urging from other Board Members, citing the extraordinary demands of the crucial start-up

year, Chairman Mehle refused to schedule a single additional meeting. He thus prevented the Board from providing oversight and guidance to the Executive Director and the staff.

There is nothing in the statute giving him exclusive authority to chair the meetings, and yet when other Members asked for a rotating chair, he refused. The meetings became so contentious that we voted to have them transcribed verbatim. And when the problem of lack of communication was raised, the Chairman, true to form, refused to communicate about it. I suggested that we needed to meet informally to consider our inability to function efficiently, and the Chairman refused. Finally, when Shannon Clyne quit in frustration, Chairman Mehle made no effort to find out why.

The Board has, in essence, two responsibilities. It must set policies and exercise oversight to make sure they are carried out. The evidence of Chairman Mehle's inadequate leadership is that he has prevented the Board from accomplishing either one.

2. Failure to Establish Policies

My concern here, once again, is not with disputes over policy or statutory interpretation, but with Chairman Mehle's failure as a leader. In fact, it can be argued that there can be no policy dispute because the Board has never considered any policies. Despite the fact that the statute specifically directs the

Members to establish policies (Sec. 8472(3)(f)), Chairman Mehle would not permit us to do so, arguing, unbelievably, that the Members of the Board could not set policy because it might interfere with what the Executive Director wanted to do. (See minutes of TIB meeting of April 27, 1987) His position at that meeting was that the staff should decide what the policy issues are, and then prepare briefings on them for the Board. As I have just noted, I attempted to place the attached policies on the agenda for discussion, and Chairman Mehle refused. Efforts by the other Members were similarly rebuffed.

He refused to allocate time or resources for long-term planning, crippling the efforts of other Board Members to design the system in any kind of thoughtful, orderly fashion. This was just the kind of private-sector expertise we were brought in to provide. I believe that some kind of long-term planning is an essential component of prudent, reasonable management, and I cannot conceive of a ground for preventing it. Yet he continually postponed consideration of long-term planning, and continually promised that it would be raised in a few more months. (See minutes of TIB meetings of December 18, 1986, November 21, 1988, etc.) The Board has been in operation for 18 months, and as far as I can tell, it is still operating entirely ad hoc.

I do not believe that approval of a budget constitutes policy or planning, and I do not believe that any interpretation of the

role of a fiduciary would find that to be reasonable, diligent, or prudent. Yet that is what he claims in his response to the pre-hearing questions. The important point here is that the other Members of the Board tried to schedule time for discussion of policies or long-term planning (See minutes of TIB meetings of November 21, 1986, December 18, 1986, January 23, 1987, March 23, 1987, April 27, 1987, and correspondence from John Davenport on March 18, 1987 and from Shannon Clyne, April 4, 1987), and that Chairman Mehle would not allow it. This is the opposite of leadership--it is obstruction. Chairman Mehle should not continue to obstruct the administration of this fund.

3. Failure to Permit Oversight of the Executive Director

Again, my point here is not to debate the performance of the Executive Director, but to comment on Chairman Mehle's refusal to permit the Board to exercise any oversight whatsoever. The statute gives the Members of the Board the authority to "direct the Executive Director to take such action as the Board considers appropriate." (Sec. 8472(g)(1)(B)) But Chairman Mehle continually insisted that the Executive Director was wholly unaccountable to the Members of the Board. Chairman Mehle refused to even permit the Board to consider a position description for the Executive Director. He attempted to prevent any evaluation of the Executive Director's performance. In the June 1987 meeting, Chairman Mehle described the Executive Director's position as "being for life...analogous to a federal

judge...not susceptible of legal oversight by the Board..being subject to Board control only through the removal mechanism."

(See minutes of TIB meeting of June 22, 1987) The Executive Director said, without contradiction from Chairman Mehle, that he considered his position to be similar to that of an Under Secretary. The Chairman did make a commitment that the Executive Director would provide a specific statement of the standards by which he would be willing to be measured at the next meeting. (Ibid.) Despite reminders from the other Members of the Board, he has never done so. And, Chairman Mehle has prevented any attempt to evaluate his performance. Instead, he continued to insist that the only option available to the Board, in a disagreement with the Executive Director, is a vote to terminate his employment for cause under Sec. 8472(g)(1)(C).

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My concern today is that the Thrift Investment Board is less than it could be, and less than it was intended to be, because Chairman Mehle has refused to permit the most basic kinds of policy discussions. Fiduciaries have a duty of care. That means that we must make prudent, reasonable, informed judgments about the operation of the Board and the management of the assets. In cutting off information and discussion, Chairman Mehle has made that impossible. It may be that Congress intended the day-to-day operation of the Board to be under the direction of the Chairman and the Executive Director, with the other Members acting in an

advisory capacity. But that is not what the statute says, in calling all of us fiduciaries and establishing joint and several liability. In any event, that is an issue to be debated in Congress, perhaps in the context of oversight proceedings. It is not to be decided by the Chairman, and that is what, in the last 18 months, Chairman Mehle has done.

My name was submitted in 1986 by then-Majority Leader Robert Dole, to whom I am grateful for the opportunity to serve on the Board. When the new Majority Leader's choice is nominated and confirmed, my term will be over. I am not here today in hopes of changing TIB along any particular policy lines. I am just here to say that based on my experience, Roger Mehle has been a very poor Chairman. For these reasons, based on my service on the Board, I recommend that this committee vote against his confirmation.

TIB POLICIES

I. The Federal Retirement Thrift Investment Board will be a professional service organization of the highest quality. It will meet or exceed the standards of efficiency and integrity of privately sponsored retirement systems in all respects.

II. Our obligation as fiduciaries is to provide the highest quality service for the lowest possible cost, to maximize the return to the federal employees who participate. The TIB will not re-invent the wheel. It will at all times look to the private sector for goods and services, and will only develop in-house capability if it will save money, or if it is required by the fiduciary obligations imposed by the Act and by common law.

III. Client services, in particular, communication and responsiveness, will be hallmarks of the System. The TIB is responsible for communicating the advantages of the Federal Employees Retirement System to federal employees clearly, comprehensively, and comprehendibly. The TIB will rely heavily on the Advisory Council to make sure that all covered employees are advised of their options. We have a product that will help

federal employees, and will provide them with an important benefit, in the present (tax-deferral), short-term (loan eligibility), and long-term (pension payments). We will use the best available methods of communication to sell the product, and to provide continuing information on eligibility and options, and will provide at all times channels for evaluating consumer suggestions and resolving consumer complaints.

IV. The Board must establish a clear, written statement of our organization, priorities, responsibilities, and deadlines. The budget will be tied directly to this statement. The statement should include a list of all statutory provisions that impose specific obligations on Members of the Board, with annotations showing when and how those obligations will be met.

To: Francis X. Cavanaugh-Executive Director/Federal Employee Retirement Thrift Investment Board (TIB)

From: John David Davenport-Member/TIB

Date: March 18, 1987

Subject: Observations, suggestions and recommendations for consideration and general discussion at the TIB Board Meeting March 23, 1987.

"Discussion Issues"

I. Background

The support for my comments, suggestions and recommendations are based on:

A. For background purposes, almost twenty-five years of personal involvement in the design, development, implementation and service of this same type Employer Sponsored voluntary individual savings and investment programs with the past fifteen years exclusively involving Public Sector plans for some 15 states, over 1500 cities and counties, which collectively cover in excess of 3,000,000 eligible Public Employees with over 400,000 active employee participants. These participants contribute over \$400,000,000 annually into their respective plans which have accumulated assets in excess of two billion dollars;

B. Numerous discussions during the past sixty days, since my appointment January 5th, with various parties involved in the development of the Federal Employee Thrift Plan and its enabling legislation, including yourself, Roger Mehle, Clyde McShan (and his staff at NFC), Chairman Ford and Tom DeYulia and numerous others;

My personal conviction that the intent of Public Law 99-335 in establishing this Program, this particular Board, and the specific requirements for the Presidential Appointment process, was to bring private sector talent with very specific expertise into this Program and to give them the responsibility to oversee both the development and administration of the Program through an active involvement and use of our individual knowledge, experience and backgrounds.

We have been have given the authority and responsibility to establish an entirely new organizational structure and related support service systems with the charge that it be done "in the best

1. Bd.
Involvement
for private
sector expertise
2. Highest
quality

interest of the employees".

Based on my personal experiences in these specific activities, and on my interpretations of what I believe to be the intent of the Congress through this legislation, I accepted the appointment to this Board in anticipation of being able to be part of creating a new organization which would design, develop and deliver the finest Employee savings and investment plan in the United States in terms of benefits, related employee services, and investment performance (consistent with Public Law 99-335) at the lowest possible costs to the account of the participating employee.

Simply stated, our mission should be to achieve these goals in the most effective and efficient manner possible.

To this end, we should initiate the same proven private sector Business policies and practices, which we would establish and enforce if this organization were a new publicly owned company and we were its Directors and shareholders. We should establish clear directions, objectives, and timetables with a specific definition of operational and financial expectations and standards of performance. We should run the Corporation like a business with the Federal employees as our customers and shareholders.

These are the conceptional goals of this memo and my commitment to this Program.

Let me clearly state that I fully understand and appreciate that many of these issues have already been addressed and are either in place or on line to be resolved by current and planned actions and activities of the staff.

Secondly, I realize that the almost total focus of the staff and Board's efforts since inception was to put in place the operational capabilities to accommodate the Phase I requirements for the April 1st deadline.

This was an almost impossible task. Had you not made the NFC connection, I do not believe that you would have made the date. I visited NFC last week and was extremely impressed with their grasp, understanding and commitment to this effort. I am confident they have the systems and abilities to fulfill the limited Phase I requirements.

With this operation in place, I feel it is time to begin a new focus on what are, at least to me, the

major issues for our organizational efforts and future development.

In this light, I submit this far too lengthy narrative of observations, suggestions, etc...

I would appreciate your thoughts and considerations of these issues at our Board meeting on Monday.

II. Definition of Responsibilities, Functions, Objectives and Detailed Business Plan

A. Review of Needs, Requirements, etc...

We need to establish a specific definition of the operational requirements of Employer Sponsored Voluntary Individual Savings and Investment Plans, both in general terms and with specific focus on the functional needs of the Federal Thrift Plan, as it is to be for the balance of 1987, and as it needs to be for 1987 and beyond.

Everyone involved, including the Board, the staff, all involved agencies, members of the Advisory Board and members of the key Congressional Staffs would benefit greatly in making decisions and establishing organizational goals, budgets, systems and oversights, if the Board would clarify in written form the basic requirements, functions, and unique needs surrounding these type of voluntary plans. By voluntary, I mean plans (such as the Thrift Plan) in which the actual success or failure is totally dependent on the ability of the employer (in our case, the Board) to package, deliver and service the program in a way to achieve and maintain a high level of employee awareness, understanding, confidence, and ultimate participation.

It is absolutely vital, in preparing such a "Review and Business Plan", that we understand the unique differences between this program and other types of conventional 401(k) programs which do not include investment alternatives representing fully voluntary employee participation.

An extremely important employee benefit advantage of our Thrift Plan provides for not only the matching contributions to participating employees (i.e. the FER's alternative), but also for substantial excess contributions above the allowable matching contribution, and perhaps most importantly, the opportunity for all employees not covered under the FER'S system to make a fully voluntary tax sheltered investment contribution.

In this case, the Thrift Plan extends a new and timely

benefit to millions of Federal employees who have never enjoyed the unique tax and investment advantages of these type plans (except for IRA's-which they have now lost). These employees can now use the Thrift Plan as a vehicle with special tax and investment incentives to help provide for their own future financial security.

B. Recommendation:

1. Review

That the Board direct the Executive Director and his staff to undertake a comprehensive review of a select list of comparable Plans (involving both matching and voluntary contributions) in both the public and private sector and to interview such companies, organizations and individuals regarding the design, development and administration of these Plans.

Based on the results of these efforts, and a internal match-up with our present organization and proposed operations, the Executive Director, his staff and Consultant should prepare and present back to the Board within sixty days a clearly defined review and Business Plan detailing the specific requirements, objectives and services for the Federal Thrift Plan. The Business Plan should include recommendations as how to best establish, implement and service the various type of operational requirements including:

- (a) General Administration and necessary EDP systems and services, including Plan Administration, Investment Administration, etc...;
- (b) Employee communication and educational services;
- (c) Ongoing day-to-day employee support services;
- (d) Financial accounting systems;
- (e) And lastly, how to best establish cost/benefit standards and participation objectives.

2. Technical Advisors/Consultants

Inclusive in this recommendation is the authority to retain outside consultants to assist in the development and preparation of this Report and Business Plan.

I would further recommend that any such individual or organizations that might be selected to assist in this task be strictly prohibited from having any

Need Board participation

*Business Plan with 60 days
This must be completed and
be later recommended
for completion*

future participation or other involvement with the Thrift Board.

I would recommend that any such organization be able to demonstrate documented experience in the design and/or operations of similar such programs involving voluntary employee participation and investment contributions in either 401(k), 403(b) and/or 457 Plans.

There are numerous organizations who have had such experience including several major public accounting firms, consulting organizations and financial institutions.

3. The Business Plan

The business plan should include such specific operational and economic information and details as:

- (a) Graphic detail establishing clear definition of the proposed services and operational requirements for all functions broken down by major operational departmental responsibilities (i.e. Administrative, Employee Services, EDP Support, legal/compliance, etc...) It should include personnel staffing requirements, job descriptions, contract service cost, and provide new budgets based on the individual requirements as part of our overall budget; much of this appears to already be well in place.
- (b) Projected levels and timing of actual employee participants including cash flow from contributions and asset growth;
- (c) Projected budgets which would define and reflect the projected cost of overall administration as either a flat dollar annual charge per participant (i.e. \$10.00, \$25.00 etc...) or better yet as a percentage assessment against the income, assets and/or cash flow of the overall plan, inclusive of estimated forfeitures.
- (d) Lastly, it should include and recommend for Board approval certain minimum levels of accepted performance standards by which the Board, Congress and the actual employees/participants can measure the level and quality of our proposed services and related costs.

These can include such comparative evaluation criteria as:

- (1) Comparing employee participation by:
 - (i) enrolled matching contribution participants versus eligible;
 - (ii) voluntary participation versus eligible;
 - (iii) as contrasted with comparable plans in both the public and private sectors.

This will provide a graphic and objective standard to measure the effectiveness of the programs delivery systems.

- (2) Comparing the investment performance of the funds as authorized under the statute and established by the Board's Executive Director with other known indexes, comparable plans investment performance, and other types of investment measurement devices;
- (3) Comparing the actual cost of administration with comparable public and private sector plans, at like stages of maturity, and creating standards for measuring such costs;
- (4) In some way, and this is very difficult, establish a means by which we can measure the level and quality of services as contrasted to private and public sector plans; constantly testing the level of employee satisfaction and/or dissatisfaction with the various components of the program and support services.

III. Statement of Purpose/Mission, etc...

I would propose we establish a very clear Corporate Statement of Purpose or Mission in which we define our Corporate objectives, philosophy and commitment to the interest of our customers and "shareholders-the Federal Employees;

IV. Policy, By-Laws, etc...

We need to develop policies, By-Laws, etc...which reflect the purpose, commitments and policy directives of the Board for management.

V. Rules and Regulations/Conflict of Interest Statements etc...

These need very specific review, development and oversight;

VI. Discuss and establish the basis for an active involvement of the Board Members.

I would like to recommend the following suggestions;

That the Board consider creating several task force/operating committees which will have the specific responsibility to design and oversee the development of policy, procedures, Departmental Business Plans, and budget for each major operational arena. These major departmental arenas will become clearly defined in the Business Plan. It is my suggestion that such committees should be represented by two members of the Board, two members from the management staff and one member from the Thrift Advisory Board.

Clearly, the primary purpose is to secure the input of the knowledge and experience of the Board Member for a very express purpose and function. Obviously, none of the members of the Board have either the time nor expertise to make such a concentrated effort on each and every functional activity within the broad scope of our overall program. This approach will utilize the particular talents of the Members and will certainly give other Board Members a confidence that each and every major arena or activity within the broad scope of the Plan is being constantly reviewed by a highly experienced colleague with the same interest, concerns etc....

These committees can function very well through telephone and written communications with staff, and regular meetings held in advance of regular Board meetings.

With these thoughts I would suggest the following committee considerations:

A. Governance/Compliance

1. Responsible for developing policy statement, By-Laws, charter, overall corporate/agendas, issues etc.;
2. Policy, procedure and oversight of all activities with the respect to legal requirements including compliance with Public

- Law 99-335), rules and regulation, Department of Labor and ERISA requirements; tax and securities issues including state securities, insurance and tax authorities, and all matters which might be related to the Board's collective and individual fiduciary responsibilities, conflict of interest, etc.;
3. My suggestion would be that this committee include the office of General Counsel.

B. Investment Committee

1. To prepare the guidelines, policies and procedures; make basic recommendations regarding negotiated Board actions on all investment activities legally permissible under the statutes;
2. To establish policy and procedures regarding contract requirements, RFP considerations, etc..., with respect to issues regarding third party or outside investment management or advisory contracts, again where permissible and not prohibited by statute;
3. To prepare policy and procedures for establishing and maintaining a performance evaluation system to monitor the various investment alternatives and selected management including the establishment of performance standards, etc...
4. To establish to vehicle for review, recommendations, changes etc.. that might from time-to-time enhance the individual employees interest, participation and benefits.

I would recommend that this committee include the Chief Investment Officer of the Board and the Executive Director.

C. Employee Support Services

1. To develop and oversee the Plans, policies, operations and budgets for the Employee Education and Communication activities of the Program. This would include necessary interface with the Thrift Advisory Board, the Office of Personnel Management, and other such level of federal agencies as are necessary to secure the level of employee participation as might be established by the Board for a participation objective;
2. To develop and oversee the plans, policies, operations and budgets as required to deliver the same if not superior level of day-to-day administrative services to the individual employee participant that might be found in comparable public and private sector plans or

by an individual participating in a conventional tax sheltered investment plan.

This committee should include the Director of Employee Services and Director of Internal Agency Relations;

D. Budget/Audit Committee

1. To develop and oversee preparation of general and departmental budgets including all internal operations, contract service requirements etc.;
2. To review and recommend policies and procedures to the Board including preparation of the scope, requirement analysis and selection process for the selection of outside auditors, accountants, etc., as might be required by the statute and the Board;
3. To develop, recommend, and oversee the development of projected financial operations including budgets, cash flow projections etc... which will reflect a "proforma" analysis of present and projected financial operations;
4. To establish the objectives and standards for a performance analysis to determine the relative cost assessment of our Plans administrative expenses as a proportionate percentage of either assets, cash flow and or a flat cost against the individual participant including policies for detailing with the forfeiture issues, excesses, etc.;
5. To develop and oversee the policy and procedures for audit requirements, including intergovernmental audits, such as the GAO, annual financial audits, necessary audit procedures for internal controls and other operational performance audits as may be necessary to insure the Program efficiencies;
6. To review, consider and recommend policy and procedures for special Internal Auditors for the Board;

I recommend this committee be staffed with Chief Financial Officer and the Executive Director.

E. Administrative Committee

1. To prepare and oversee the overall Business Plan and to coordinate the integration of all established committee plans and budgets into the primary Business Plan and related budgets;
2. Responsible for all personnel policies, procedures, etc.;

3. Responsible for all administrative operations of the Board;
4. Responsible for all interagency relations between OBM, the Executive Branch, other federal agencies not specifically involved with an operating committee i.e. OPM/Employee Support Services etc.;
5. Develop and oversee necessary policy and procedures to insure the performance and compliance of the management staff and the Executive Director with the objectives, policy and direction of the Board.

I recommend this Committee include the General Counsel and Executive Director.

If we adopt a committee structure, I would suggest that the Chairman and the Board discuss possibly rearranging dates and schedules of our future Board meetings to coincide with a time schedule for committee participation in order that these might be accomplished during regular Board meeting visits.

VII. Planning Conference/Seminar

I would like to suggest that the Board consider holding a special planning conference to review our proposed operations on a departmental basis, i.e. NFC, legal, administrative, employee services, etc.. to be held in conjunction with our next regular scheduled board meeting.

In addition, I would like to propose that we consider a special planning program with a panel/seminar format.

I feel that we could assemble some of the most outstanding knowledge, experience and talent in the United States to share with us their front-line experiences in each of the major arenas of our required operations for a very, very minor cost consideration. For example, we might schedule three or four panels with specific focus on each of the major arenas (i.e. Government/Compliance, Audit/Budget, Employee Support Services, Plan administration/EDP Services and/Alternatives, etc...

I am confident that we could bring together the individual and collective knowledge of perhaps 10 to 12 representatives from many of the nations most outstanding organizations involved in such plans

*Ad.
Support
Committee*

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including:

- A. public companies, i.e.: AT&T, Proctor & Gamble, etc.;
- B. State, City, or County governments: Maryland, Michigan, Florida, Missouri, etc.;
- C. the Teachers Insurance Annuity Association, the nations largest public sector organization administering a program similar to the Thrift Plan for hundreds of thousands of educational employees for countless universities throughout the country which currently manages over fifty billion dollars in assets;
- D. major financial institutions such as: Bankers Trust, Morgan Stanley, Prudential, Nationwide, Fidelity, etc... *See Sheet*.
- E. representatives from the National Association of State Deferred Compensation Administrators, an organization made up of the key managers of the largest thirty-five state Employee 457 voluntary savings and investment plans, etc.;
- F. major public accounting firms and consultants who have a prospective interest in the operations of this program etc.;
- G. attorneys familiar with ERISA and fiduciary liability issues. *Person* ("ERISA")
- H. The Employee Benefit Institute, the nations foremost "think-tank" for these type Programs with tremendous resources.

We should invite not only members of our management staff, our Board, but also agencies involved with this program such as the Office of Personnel Management, of the OBM, Congressional staff members etc....

We could establish a very precise agenda for presentation by each panelist giving them each fifteen to twenty minutes to discuss a specific issue and then allowing approximately forty-five minutes to one hour for discussion among three to five panel members. We should ask for written copies of their presentations.

From this educational platform, we should be able to move forward immediately with the development of our comprehensive review, requirement analysis and Business Plan and, with the support of a technical Consultant and Advisor (who might well be involved in the panel), have a comprehensive Business Plan for Phase II activities by mid-summer.

II
- Skis
etc.
and
more.

VIII. Personnel IssuesA. Hiring

I think we need to discuss a moratorium on the hiring of any additional employees, other than those required for Phase I activities, until such time as we can assess the specific needs and requirements of our Business Plans. Further, we then put special emphasis on attracting highly competent individuals with proven private and public sector "hands on" experience in the design, administration and servicing of our particular type plans.

B. Training

For current personnel in their present roles, I think we need to institute immediate educational activities to make them technically conversant with the operational requirements of our type program by attending various seminars, learning the general requirements of the Thrift Plan through personal visits with their counterparts in public and private sectors; and any other educational devices we may conceive or develop.

C. Deputy Director

I think we need to immediately recruit and attract a highly competent individual with specific private or public sector "hands on" experience in the field of design, implementation and administration of Employer Sponsored Thrift Plans with voluntary employee participation to be our Deputy Director. Such an individual would provide our Executive Director (who brings an outstanding background in Public Administration and Federal systems expertise) with the type of internal operational support, expertise, and talent necessary to implement our future requirements.

IX. Technical Advisor/Consultant

We should immediately begin a process to develop a Requirement Analysis for an RFP to select a Technical Consultant to assist us in the preparation of the Review and Business Plan covered under Section I. If such a contract must go through a formal RFP selection process than we need to expedite this process in every way possible.

X. Congressional Considerations

A. Procurement Requirements

We should consider seeking exemption from Federal Procurement Requirements. Absent a total exemption, we should seek a least a waiver for the balance of 1987 and 1988 during the developmental process. The time pressures for operational performance simply will not accommodate the traditional time delays of the normal procurement policy, at least as I understand them. I would like to discuss this.

B. Personnel

We should consider and discuss questions involving the possible exemption from the Civil Service Personnel policies and requirements. Our organization must have the expertise, talent, commitment and management abilities to oversee the development and operations of a highly complex Plan involving more money, more individual employees participation; more transaction and service responsibilities, with more annual cash flow, invested assets and future pay out distributions than any other single Plan or similar business enterprise currently operational in the United States.

This includes several mega-billion dollar operations in this same arena including the fifty-billion dollar TIAA/CREF facility, the Prudential Insurance Groups tax sheltered benefit operations, the Fidelity Groups or Merrill Lynch's tax-qualified operations, etc... We simply must be able to compete for talent in this arena and compensate our management. If the compensation arena is out of bounds, then perhaps we should be able to at least get waivers on certain hiring requirements which will let us attract private sector individuals with very specific expertise without the traditional Civil Service qualifying limitations, if they do in fact pose constraints as I have been told.

C. Fiduciary Liability

This is an issue which has already been discussed and evidently has a solid opportunity for immediate resolution.

If this does not succeed, we need to discuss Congressional solutions to this problem which clearly are in the best interest of not only the Board, the Employees, but also the Federal Government.

D. Federal and State Securities, Insurance Issues

We should discuss and consider the possible consequences of either Plan, management or Board members as well as Employee participants (either through the products and services we provide) being accused by some potential jurisdiction as violating some Federal or States securities laws as well as other insurance, banking and other possible statutes.

I do not know or understand present exemptions of federal programs from state statutes nor do I begin to understand exactly how this plan, its investment options and our activities might be construed by the SEC or the various individual states securities commission as falling within their jurisdiction. But I can almost guarantee that someone, somewhere will try.

Therefor, I would like discuss and consider the possibly of legislation which would exempt this plan clearly from such potential difficulties if such does not already exist.

E. Discussions concerning the intent of Congress with respect to the Level and Quality of Employee Services.

1. Employee Communication, Education and Enrollment Services.

We should discuss the need to seek clarification to Congress's intent concerning the Board's role in establishing or pursuing either a Passive or Aggressive employee educational, communication and marketing service program.

Further we should discuss whether the Board's marketing program should have a direct interface and access to employees on either a personal or some type of telephone access or whether our role should be solely supportive of OPM as the actual Employee Delivery System. This question is critical not only during the

initial FERS conversion but also extends to the continuous need for employee educational and enrollment services in the future and for those million of employees who will be unaffected by FERS.

Further we need to perhaps simply ask Congress what levels or standards of employee participation should be the objective targets for the Board, i.e. Do we simply develop and make the program available; or do we aggressively promote its awareness, understanding, confidence and participation? (It is pretty easy to see where I stand). Should our standards/objectives be the requirements for the nondiscriminatory test requirements? Should there be comparative performance with comparable Plans in Public/Private sectors?

2. Day-To-Day Employee Services

We should consider discussion and clarification as to "the level and quality" of administrative support services intended by Congress for day-to-day employee requirements, i.e. Do we provide basic minimum response and services through traditional departmental and written channels?.. or Do we establish a state-of-the-art centralized service center supported by a direct access EDP facility for instant response to individual employee needs, inquiries, account transaction requirements, pay out distributions, withdrawals, loan requirements, etc.,, all delivered on a direct basis to both prospective and participating employees through a nationwide direct response capability/commitment including a 1-800 Information, Inquiry and Service facility.

I can assure you the employees will want, deserve and will demand prompt efficient action when it involves their money!

Certainly every major private sector provider of these type services delivers this level support.

If our Plan is to provide this same level of services, we need to know whether or not it should be a function of the Board or of OPM and who's role should be what in this endeavor.

Also if we are to provide such support services, we have to consider the cost impact of such efforts as it might seriously effect the investment yield of the individual participant in the early years unless forfeitures will cover such cost.

F. Exemption from Nondiscriminatory test requirements.

Clearly, I support a broad-based employee participation effort which will produce the type results necessary to meet nondiscriminatory requirements.

The possible constraints of our present system, (employee enrollment and educational services) and what will be early year participation trends will almost certainly not meet normal IRS nondiscriminatory requirements. This will create extreme problems for the Program in terms of administrative difficulties, employee confusion and general dissatisfaction.

The problems will occur as the majority of early participants will be those individuals who have a high level of tax and investment knowledge and are eagerly awaiting participation in both phases of the Plan, both matching contributions as well as voluntary excess contributions. Since most of these type participants are in the highly compensated one-third, and since it will take at least two years to effectively penetrate and secure participation from the bottom two-thirds (even with a highly effective delivery system) we will most likely, during this time, find the Program continuously in jeopardy of nondiscriminatory cut-back requirements. This problem is not unique to the Federal Thrift Plan.

The issue of nondiscrimination in these type plans has been resolved favorably on behalf of public sector employees in the 457 arena. In these type cases a public sector employee working for a state, city, or county may contribute up to twenty-five percent of their compensation (not to exceed seventy-five hundred dollars) without any nondiscriminatory participation requirements.

I would suggest that we ask Congress to waive entirely the nondiscriminatory participation requirements but absent such permanent exemption, then at least secure a waiver for the first three years operation in order to give the program time to achieve an effective penetration throughout the broad based employee universe.

This might be provided through a special IRS ruling giving the Federal Thrift Plan 3 years to achieve nondiscriminatory compliance.

In any case, it means we must deliver effective employee participation.

If you have generally read and digested the essence of this boring novel on "How to Build a Public Sector Savings Plan" without:

- (a) Following asleep,
- (b) Wondering when I would stop or
- (c) Switched on the television set to watch the NCAA tournament.

Then you're a better man than I-my friends! See you Monday!

Yours truly,

John David Davenport

FEDERAL RETIREMENT
THRIFT INVESTMENT BOARD
Benjamin Franklin Station, P.O. Box 511
Washington, DC 20044

April 2, 1987

Dear Dave:

This is in response to your letter of March 19 and the comprehensive "Discussion Issues" memorandum of March 18, which you submitted for possible discussion at the March 23 Board meeting. Unfortunately, both documents were delivered to my office by Federal Express on March 23, after our Board meeting had convened in Chairman Mehle's office. Yet, I think good progress was made at the meeting on the important issues raised in your memorandum.

My purpose now is to try to make clear my understanding of how we must proceed over the next few months on the most critical issues.

First, I want to thank you, Dave, for your very supportive comments after my testimony on March 24. I sense that there is now a much greater communication and understanding among the Board members as a result of our five-hour Board meeting on March 23 and our joint testimony before the House Post Office and Civil Service Committee on the following day. Thank you also for your support at the Board meeting of my budget, staffing, and procurement policy proposals for FY 1987.

Hopefully, my following comments will help to identify any significant remaining areas of confusion or disagreement. If my comments seem too blunt, I apologize, but it is critical that we reach a common understanding as soon as possible.

Statutory Requirements

Given our time constraints, our planning over the next few months must be consistent with the existing statutory framework, except of course for necessary technical changes and the major immediate legislative changes proposed in my testimony regarding fiduciary indemnification, nondiscrimination; and the public debt limit.

I do not believe it would be productive at this point to seek to change the statutory provisions which vest in OPM and the employing agencies the responsibilities for training, counseling, and communicating with employees regarding the Thrift Savings Plan and their related CSRS-FERS questions which must be answered in implementing the new retirement system. The OPM training process now under way, which we are contributing to, provides for training 4,000 "decision advisers" within the next month. The apparent Congressional intent is "one-stop service" at the local personnel office. Given the persuasive logic of this approach, I do not believe we should consider assuming ourselves the roles of direct employee counseling or servicing.

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We must also adhere to competitive hiring, procurement, and other practices in keeping with the FERS Act and our status as a federal agency. While a case could be made for trying to operate like an independent business, paying the salaries needed to attract top talent, and moving quickly in procuring other services, we cannot.

With regard to the questions you raise about the role of the Board, the staff, and the Thrift Advisory Council, and the possibility of establishing committees with policy and functional responsibilities, I believe we have no practical choice but to operate within our current statutory framework, at least for this year.

The statutory role of the Thrift Advisory Council is strictly advisory, and we cannot shift to that group any policymaking or operational responsibilities through committee assignments or otherwise.

My own statutory role as Executive Director requires that I assume total responsibility for executing the policies of the Board. I cannot share either this responsibility or my sole responsibility under the law for making all expenditures and appointing all personnel of the Board. This applies to all functions of the Board. The staff is responsible to me, and I am responsible to the Board.

In short, I do not think it would be responsible to take time out from our fundamental mission and more pressing priorities to consider proposed changes in our basic statutory framework at this time. We are too committed to the present framework, as are the other agencies, to attempt to change it at this point. It is our task to provide the policies, the structure, and the leadership to the thousands of personnel and payroll offices who must do the job for us. Nothing else will work. Also, it seems clear to me from the legislative history that Congress intended that the Thrift Board itself be a relatively small staff.

Long Range Planning

We must continue with a phased approach. Long range planning is the ideal, but we must first meet our immediate statutory deadlines. I agree that it would have been ideal had we been able at the outset to do a comprehensive review of similar private and public plans—interviews, visits, seminars, studies, major consulting contracts—to get the best information available from the experience of others, and then plan and develop the total system before operations commenced. Indeed, I planned on just such an approach when I was first recruited for this job, and after just one reading of the FERS Act. Then I read the Act again and concluded that there would be very little time for this orderly approach. Then, I read it a third time, and a fourth, and a fifth, and realized that there was no time at all. Thus we took the only available approach of immediately proceeding to develop the Plan one step at a time. We got the best brains and experience we could find, from both the public and private sector, to focus on each piece as we developed it and to trouble

shoot it as we put it in place. Finally, we hired Price Waterhouse last month to review the entire Phase I before it became operational, and they gave the assurance we needed that we were on the right track. Fortunately, we got good and quick advice as we went along, so we were able to plan and develop at the same time. We have no choice but to proceed in the same manner with Phase II.

I believe we all now agree that had we taken the ideal long range planning approach, and procured the software of another 401(k), which is necessarily a time-consuming iterative process, we could not possibly have Phase I (enrollments, contributions, investments, and earnings allocation) operational by the April deadline. Phase II (withdrawals) is no different, since it must be operational in May. We must now concentrate our efforts on the structure for withdrawals, including death benefits, transfers, garnishments, lump sum payments, and annuities, which is much more complicated than the Phase I structure.

We think we have a good initial system (Phase I) for employees to put their money into our Plan. But we must assure them very soon that they will be able to get their money out (Phase II).

I realize that this phased approach causes some uneasiness for members of the Board. It would be better to be assured in advance that all will be well. But we cannot create time, and that is the problem. We must continue to run the train at the same time that we are building the railroad. I must have the continued confidence, trust, and support of the Board on this approach, if I am to do the job effectively.

Nevertheless, I have committed to provide the Board over the next few months with a long-range business plan and recommendations regarding a major procurement of a private contractor to do a comprehensive study of the Plan. I will do my best to honor that commitment, but I have misgivings about our ability to continue functioning effectively if I must devote significant amounts of my own time and the time of key personnel of my new and small staff to the development of a very substantial plan and procurement. In this regard, the detailed report contemplated in your March 18 "Discussion Draft" is far beyond what I could responsibly undertake to do within the 60 days suggested.

We should be, and are, open to inspection and audit by others, but we cannot tolerate very much of that. The Thrift Savings Plan is like a newly planted tree, and if we keep pulling it out of the ground to see if the roots are still healthy, the tree will die.

Investment Policy

As to investment policy planning, our primary focus must be on the Government Securities Investment Fund (G Fund). By law, we have no choice but to invest all of our funds in the G Fund in 1987, and nearly all (perhaps 90%) of our investments will be in the G Fund for the next couple of years. What this means, of course, is that any time we spend now thinking about the C and F funds (common stocks and fixed-income

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securities), which cannot be offered until 1988, must not distract us from our immediate objective of negotiating the best possible arrangements with the Treasury on the G Fund. We must strive for maximum flexibility on maturity selection, redemptions prior to maturity, "as of" investments, daily interest compounding, accounting, and reporting procedures.

If our negotiations with Treasury on these marginal matters produce just 10 basis points of additional interest yield (and I am attempting to achieve at least that), we would soon earn about \$10 million more annually for federal employees, assuming as I do that the G Fund will probably reach the \$10 billion mark in the next few years.

We have already secured a commitment from Treasury on the "4 and over" interest rate produced from our statutory yield formula (which as you know was a difficult negotiation) and that commitment will give our Plan an advantage of about 150 basis points, under current market conditions, compared to other investors in short Treasuries. This additional yield will be about \$150 million a year (assuming a \$10 billion G Fund), which would increase the average federal employee's interest earnings from the the Fund by roughly 25%.

We do not need consultants to tell us how to manage the G Fund. I spent most of my professional career managing the Treasury debt (and I have hired two of Treasury's best people to deal with G Fund investment and accounting issues), and I could not responsibly take time out from our pressing priorities, or spend federal employee's funds on high paid private consultants, to tell me what I already know. By law, I and the Board members must be experts on pension and investment management, and my policy responsibilities in the Treasury in recent years for managing the public debt and for the largest pension funds in the nation (Civil Service, Social Security, Military, etc.), and for the largest bank in the nation (Federal Financing Bank) should have qualified me to manage the G Fund. I see no way that I could explain to Congress why I spent employees' savings to get advice on matters that I used to teach my subordinates in the Treasury.

As to the C and F Funds, they are important (and we have undertaken considerable research on them), but they will not have nearly as much impact on employee earnings as the G Fund in the early years; and they cannot, by law, be offered until 1988. Also, we cannot use much imagination on the C Fund since we are permitted only the discretion to pick a stock index. The F Fund, on the other hand, will require more imagination, and we will certainly want to have considerable input from private experts; but then the Board must make its own expert judgment.

In fact, the combined expertise of the Board covers just about every important aspect of the Thrift Savings Plan. We certainly cannot delegate our responsibilities, and I do not think we can spend many hundreds of thousands of dollars of employees' money to have private experts tell us what we are supposed to know ourselves. I am particularly reluctant to incur substantial expenditures for these purposes over the next few

months, since they could have such an adverse impact on employee net earnings statements that we would be off to a bad start.

Organization

As noted earlier, it would be counter-productive at this point to try to run the Thrift Savings Plan as if it were an independent private business, since we are by law a government agency wholly dependent upon other government agencies both to establish our Plan and to operate it. Moreover, while much has been said of the supposed inefficiency of government, my observation after 32 years in Washington is that that inefficiency arises almost entirely from political considerations. The Thrift Savings Plan by law is largely exempt from those political considerations, and I believe that it has every chance to become a model of efficiency. I have never known another piece of legislation with such strong and united support from both Houses of Congress, from both political parties, from the employee unions and from the entire federal establishment. They all want to make it work, and I believe they will. Every member of Congress, payroll officer, personnel officer, and administrative support person is a potential member of the Thrift Savings Plan. Self-interest will make it work, just so long as we do our job of providing the basic structure, policy, administrative guidance and expertise to enable the agencies to do the job. As for my own small staff, they are second to none, public or private, so long as they have our support.

While the Board members serve only part time, I clearly could not have done this job without the Board, especially in the early formative months when the support of the initial three-member Board (Mehle, Clyne, and Headlee) was so important. The leadership provided by Roger Mehle has been outstanding, from the first critical and decisive month of October, when he ran this agency while I was still unwinding in the Treasury. The key decisions were taken at his initiative...to rely on the National Finance Center (rather than the private sector) for the initial record-keeping function...to persuade the White House that the original statutory deadline of January 1, 1987, was impossible and must be delayed until April 1...to seek government indemnification, rather than insurance, of fiduciaries...to persuade senior officials in the White House, OMB, OPM, Agriculture, Treasury and many other agencies of the urgency and enormity of our task and to gain that initial top level support that has carried us ever since. Those decisions have since been vindicated and are now supported by everyone I talk to in the public and private sector, but they were gainsaid at the time. Fortunately, Roger had the courage and foresight to pursue them.

His senior management experience at three of the top investment banking firms in Wall Street stood us in good stead. Every important step of the way since then, I relied heavily on Roger's counsel and assistance to see us through. I fully exploited his good nature, his experience, his contacts, and his willingness to do whatever necessary day or night to help me get the job done. While we got a lot of good advice from outside experts, no one knows more about what we are about than Roger Mehle. We

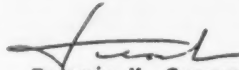
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could not have accomplished Phase I of the Thrift Savings Plan effectively or on schedule (April 1) without him. I am confident that we can accomplish Phase II in May with his continued leadership and the continued support of the Board.

The secret of our success to date has been our ability to mobilize the entire federal establishment to do the job for us. This is what Bob Monks refers to as "making the elephant dance," and Bob has been most generous in his praise of my ability to do it. If, indeed, I did do it effectively, it was largely because Roger Mehle was on such good speaking terms with the elephant.

Dave, I have attempted to communicate my understanding of the general approach we must take to get the Thrift Savings Plan off to a good start. I hope that these thoughts, along with our extensive discussions on March 23 and my testimony the following day, will be helpful to you and the other members of the Board in reaching a common understanding and agreement on the critical issues and priorities.

Sincerely,



Francis X. Cavanaugh
Executive Director

Mr. J. David Davenport
Chairman
Public Employee Benefit
Service, Inc.
6420 North Santa Fe, Suite C
Oklahoma City, Oklahoma 73116

cc: Messrs Mehle, Clyne, Headlee, Monks

MEMORANDUM

TO: Members of the Federal Retirement
Thrift Investment Board

COPY: Francis X. Cavanaugh, Executive Director

FROM: V. Shannon Clyne

RE: Organizational and Related Matters

DATE: April 4, 1987

Frank's letter of April 2, 1987, to Dave was a help in crystallizing a number of issues that have been concerning some or all of us over the past few months. I am in strong agreement with many of the things Frank said in that letter, and I am in equally strong disagreement with other things that Frank said. In this country we jealously guard the right of reasonable people to differ. And it is my experience that reasonable experts have a tendency in the early stages of their deliberations to disagree on virtually everything. The statutorily defined experts on this Board are no different. There are several important areas of disagreement. It is our responsibility to resolve those disagreements as swiftly as possible lest they interfere with our essential mission of implementing the Thrift Savings Plan for the benefit of Federal employees.

In reference to Frank's letter, I agree that:

- 1) Frank and Roger did truly extraordinary work in getting the program started and without their very specialized knowledge and expertise, and without their remarkable commitment and effort, the program might well have crashed on take-off.
- 2) Frank and his staff have done a superior job to date, against nearly impossible deadlines.
- 3) In the early months, there were inescapable trade-offs between the desirable and the necessary and we did what was necessary.
- 4) There remains a great deal of work to be done, and

with particular reference to Frank's staff, there is little room for diversion of these scarce resources.

5) "Given our time constraints, our planning over the next few months must be consistent with the existing statutory framework..."

6) We should not at present "seek to change the statutory provisions which vest OPM and the employing agencies with responsibilities for training, counseling, and communicating with employees..."

7) The staff is responsible to Frank, and Frank is responsible to the Board.

8) "...[T]he combined expertise of the Board covers just about every important aspect of the Thrift Savings Plan. We certainly cannot delegate [abdicate] our responsibilities...."

9) "The Thrift Savings Plan... has every chance to become a model of efficiency."

In addition, I believe as an article of faith that the Board and the Executive Director are sincerely committed to implementing the Thrift Savings Plan for the benefit of Federal employees in the manner intended by Congress.

GENERAL OVERVIEW

My principal areas of disagreement fall into two broad categories: first, the applicable provisions of the Federal Employees' Retirement System Act of 1986 are complex and susceptible of differing interpretations and second, while the statutory mission of the Board and the Thrift Savings Plan are quite clear, it is equally clear that Congress mandated that the Board (by which I mean the five members defined in 5 USC 9472) has the sole responsibility for defining a broad range of administrative and investment policies that were not (indeed, could not have been) included in the law itself. While any one member of the Board may believe that the law is clear and that the law says all that needs to be said, that belief simply may not substitute for a coherent set of policies adopted by a majority of the Board as provided in the law.

SUPERVISION AND USE OF STAFF RESOURCES

A theme that surfaced in our March 23 meeting, and which is more explicitly detailed in Frank's letter, is Frank's legitimate concern that staff resources will be diverted from the urgent day to day work that is currently underway and an implied, and in my opinion unnecessary, concern that Board members will confuse and interfere with the reporting lines between Frank and his staff. I am sure we each agree that job responsibilities and reporting lines must be clearly understood in order for an organization to work effectively.

It may help to relieve Frank's mind, and generally clarify responsibilities, to revisit the statute. It is the Board's responsibility to "develop" and "establish" policies for the administration of Subchapter III and for the management of investments in the Thrift Savings Plan. It is Frank's responsibility to carry out those policies and any other directives of the Board under the statute. And in carrying out those responsibilities, the statute authorizes Frank to hire a staff. Thus, "the staff is responsible to Frank, and Frank is responsible to the Board."

It will substantially reduce the workload of the staff and the possibility of confusion of responsibilities if we adhere more closely to the statutory division of responsibilities with respect to policy formulation. Policy formulation should originate with the Board and not with the staff. Frank is present at all our meetings and receives copies of our deliberations. He will thus be continuously informed of the policy direction we are taking and can add his input as required if he sees a better way of doing things, if he sees possible conflict with the Treasury or other government agencies, or if he sees mechanical or other implementation issues that we may miss along the way.

Because of the limited staff resources, the clear intent of the law that Frank's staff is his resource for the carrying out of Board policies and directives, and the necessary concentration of staff competencies in the areas of implementation and administration, the Board should retain appropriate private sector experts to assist directly in the area of policy formulation. I respect Frank's attention to expenses, but I fear false economies at the same time. We've got to spend the money necessary to get the job done right and in order to minimize administrative expense over the life of the program. Short-sighted savings today could be extremely expensive in the long run.

Bob Monks and I are exploring ways of deferring or amortizing start-up costs (as distinguished from on-going administration costs) in order to avoid, if possible, the appearance of disproportionate expense burdens on the Fund when it is still small.

POLICY FORMULATION

As Frank's letter helps to clarify the responsibilities and prerogatives of the Executive Director and his staff, I mean to help to clarify the responsibilities and prerogatives of the Board. In this regard I am personally intent on the notion that the Board will lead, not follow, in its clearly mandated responsibility for policy formulation and for governance of the program. See "STATUTORY SUMMARY AND COMMENTARY", below.

INDEPENDENT COUNSEL

Board members are jointly and severally liable for

breaches of fiduciary duty and are jointly and severally responsible for the proper governance of the program. This can not be effectively accomplished until fundamental issues of interpretation are resolved. In a massive new program lacking precedent in many areas, the existence of these fundamental issues is inescapable. Several members have found it necessary to retain counsel, in their capacities as Board members, in order to make it possible for them to perform their fiduciary duties under the law. While necessary because of the pressing nature of the issues and the formidable time constraints under which we are operating, it is highly desirable that a more cost effective method for the resolution of fundamental issues be adopted. Accordingly, I am prepared to vote to direct the Executive Director to retain independent counsel to the Board for these purposes.

BYLAWS

Apart from fundamental legal issues that need to be promptly addressed, I am convinced that there is a need to settle immediately on a procedural scheme for the conduct of the business of the Board so that, in effect, we all know the ground rules and we can get about the substantive business of the Board without unnecessary distraction. In that regard I am prepared to vote for a set of bylaws for that purpose. Nothing in the statute remotely suggests that this cannot be done, and common sense demands that it be done.

COMMITTEES

While the "combined expertise of the Board [and the Executive Director] covers just about every important aspect of the Thrift Savings Plan," it is perfectly apparent that neither any single Board member nor the Executive Director knows it all. There are well-defined strengths and areas of special expertise among Board members and the Executive Director. A division of labor is in order. In this regard I am prepared to vote in favor of the establishment of committees of the Board to act as task forces in the organization and analysis of the Board's work (as distinguished from the Executive Director's work), and in the formulation of proposed policies for action by the Board in the manner contemplated in the statute.

The minutes of the February 23, 1987, Board meeting reflect a discussion of the subject of working committees of the Board and Roger's disagreement with the committee approach. The issue of working committees was left unresolved. I feel strongly that working committees are necessary. I have specific contributions to make, and an interest in making those contributions, in the area of investment policy formulation. Those contributions are best made in a structured form, rather than as "gratuities in the mail." A working committee is an appropriate form. There are additional areas of concern that can best be addressed through the intensive focus of other Board members who have superior specialized competencies also working in

a structured and co-ordinated manner best accomplished through well defined working committees.

Roger's objections can be satisfied with proper definition and structuring of the committees. The minutes reflect Roger's disagreement on the basis 1) "that the members have a statutory charter of being knowledgeable about pension plans and investments" and 2) "that the Board serves as a committee of the whole."

1) That Board members are knowledgeable about pension plans and investments is an argument in support of committees, not the other way around. The required, and indeed demonstrated, knowledge of Board members makes it unnecessary for each Board member to work in detail every step of the way in the early stages of analysis and organization of matters for presentation to the full Board's consideration. We are each capable of understanding and judging the result of this kind of preliminary work, which can most efficiently be done by fewer than all of our members in committee. Division of labor is indicated. And the general knowledge and competency of each and every Board member assures that division of labor can be accomplished without loss of control of the process or "delegation of responsibility" in the objectionable sense.

2) The Board serves as a "committee of the whole" in the sense that it can not delegate away and thus escape its primary policy making and review responsibilities. I am confident that no Board member favoring committees remotely intends such an abdication of responsibility, explicit or implied. I have always envisioned working committees as distinguished from executive committees. The distinction is in the authority of the committee. An executive committee has delegated authority to act in place of its board. A working committee has no delegated authority to act in place of its board. The Thrift Investment Board can "act" only by majority vote. In this sense, the Board can not "act" through any committee. But issue identification, analysis, information gathering, proposed problem resolutions, and selected proposed policy formulation in anticipation of formal Board action can surely be properly and efficiently carried out by committee work.

These committees can be structured as needed, e.g., committees of the whole with one Board member responsible for moving along specific items; committees of a few who form a task force for particular projects reporting back to the Board for action as appropriate; committees of one who act as liaison for the Board with Frank or members of the staff on particular items where a single Board member has particular expertise and is willing and able to work on detail matters with the appropriate staff members.

There is nothing in this suggestion that is in any way at odds with the statute. Quite the contrary, it is an efficient way for members, who are not expected to devote full time to the business of the Board, to carry out their duties.

DAVE'S MEMO

The general outline and thrust of the committee structure suggested in Dave's memo bears serious consideration. Involvement of Advisory Council members may be an elegant way to further the intent of Section 8473(e) of the statute.

In addition, I believe the thrust of his suggestions on other matters can be adopted without duplicating the responsibilities of OPM and the various agency personnel offices. I am not presently motivated to suggest a change in the statutory scheme, in this regard, now or in the future. OPM and the individual agencies have a heavy burden of communication, counseling, and administration. I do not suggest that the Board take on that burden. It was not contemplated that the Thrift Savings Plan would bear the expense of that burden. But it is not enough to say "it's their job, not ours." We have a responsibility, within the limits of our resources and within the limits of the division of tasks specified in the statute, to see that the job gets done as well as possible.

There is much in Dave's memo that deserves, in fact requires, our attention.

FRANK'S LETTER

Item by item in Frank's letter, I have the following reactions:

Statutory Requirements:

1) Virtually all of the suggestions from Board members on planning can be accomplished within the existing statutory scheme and in aid of its clear purposes. I believe we can proceed on the assumption that if any one of us makes a suggestion that implies the need for legislative change, that need will be clearly identified and evaluated. In the absence of discussion specifically focused on possible legislative proposals, we should interpret suggestions in a way that falls within the statutory framework rather than assuming that the proponent is trying to re-write the law.

2) Once we are clear on OPM's function, and once we agree, which I am sure we will, that we do not intend to try to change or evade the statutory scheme, let's revisit Dave's suggestions in light of our general responsibility for oversight, in light the possibility that we can motivate or support the counseling and servicing processes, and in light of the fact that the very private sector participation intended in this program may provide opportunities for cost-effective enhancements to the quality of service to employees, even though the primary delivery burden is with another Federal agency.

3) While we can not operate entirely like a private

business, we are also expected not to operate entirely like a Federal bureaucracy. I think it is possible to attract outside talent and to move quickly in a number of areas. It never hurts to try. (In this regard, I support Dave's request that Frank hold up on the hiring of a Deputy Executive Director until we are able to better agree on our overall responsibility to involve the private sector in this program. We have been subject to early criticism for inter-agency incest. Our response was that it was necessary at the time. That response will not remain credible indefinitely.)

4) Suggestions with respect to committees have not contemplated that policy and functional responsibilities will be delegated in any manner inconsistent with the statute.

5) Suggestions with respect to the the involvement of the Advisory Council are intended to facilitate and implement the requirements of 5 USC 8473(e) of the statute:

"The Council shall advise the Board and the Executive Director on matters relating to investment policies for the Thrift Savings Fund and the administration of and perform such other duties as the Board may direct with respect to investment funds established in accordance with subchapter III."

I am confident that no inappropriate delegation of policy or functional responsibility was intended.

6) The paragraph that begins "My own statutory role as Executive Director..." overstates the Executive Director's prerogatives. In order to avoid further confusion, the Board must get about the business of establishing the terms and conditions of the services of the Executive Director as contemplated in Report of the Committee on Government Affairs -- United States Senate, October 1986, page 45, "Section 8474 - Executive Director."

7) The last paragraph under "Statutory Requirements" is hard to argue with as stated, and I believe misunderstandings in this regard are a matter of miscommunication and not intent. I believe we are each reluctant to propose statutory changes, especially now, unless we see that they are necessary to achieve the aims of the program. The most important immediate changes were proposed in Frank's testimony. Unless alerted to the contrary, I assume every Board member accepts the law as written and will, in the exercise of sound judgment and common sense, make all suggestions for implementation within the existing statutory framework. I personally have no fundamental reservations about the law as written and am perfectly comfortable to proceed to do my job within that framework. We do, however, have some natural differences of opinion about the best way to interpret and to implement some of the statutory provisions.

Long Range Planning:

Let me try to respond to this whole section all at once.

We are confusing planning and implementation and the burdens attendant to each. Planning is the Board's responsibility. Implementation is the Executive Director's responsibility. It is clear to me that implementation has had to proceed in a phased approach. But while Frank and his staff continue the implementation in this manner, the Board, with resources other than Frank's staff, should pursue the larger planning issues. It is inescapably true that we must continue to run the train at the same time that we are building the railroad. That does not mean that both planning and implementation must proceed in the same manner in which it was necessary to proceed in the first six months since the initial Board appointments.

I think we should specifically revisit how long range planning will proceed with a view, among other things, to relieving Frank of the burden of initiating, orchestrating, and effectuating the process. His resources are limited and it is not his primary responsibility. While Frank, with the support of his staff, is an essential ingredient in the planning process, the primary responsibility for planning is the Board's.

Investment Policy:

I applaud the implementation successes recounted in this section of Frank's letter, and I am very mindful of Frank's experience and expertise. The only difficulties I have with this section relate again to the need for a clear differentiation between the Board's policy and governance responsibilities and Frank's implementation responsibilities. I understand Frank's opinion concerning the need for consultants, I simply disagree with it and I know other members of the Board have their own views. This needs to be resolved.

Organization:

I started this memorandum in agreement with the thrust of this section of Frank's letter as it relates to Frank and Roger's early efforts and I meant what I said in all sincerity.

Today is not October 1, 1986, however. Today we have a full Board, and all the talk of the "statutory framework" is misguided if it ignores the clear meaning and intent of the law that the Board (five appointed individuals by vote of a majority thereof) has the ultimate responsibility and authority to govern this program.

STATUTORY SUMMARY AND COMMENTARY

Public Law 99-335 -- June 6, 1986

"Federal Employees' Retirement System Act of 1986" (the "ACT")

Section 101 of the ACT creates the Federal Employees' Retirement System ("FERS") and establishes the statutory framework by amending Title 5 of the United States Code (the "CODE" or "5 USC ...") by inserting a new Chapter 84 (the "CHAPTER" or "Chapter

Chapter 84 contains seven Subchapters as follows:

Subchapter I
General Provisions
(5 USC 8401-8403)

Subchapter II
Basic Annuity
(5 USC 8410-8425)

Subchapter III
Thrift Savings Plan
(5 USC 8431-8440)

Subchapter IV
Survivor Annuities
(5 USC 8441-8445)

Subchapter V
Disability Benefits
(5 USC 8451-8457)

Subchapter VI
General and Administrative Provisions
(5 USC 8461-8470)

Subchapter VII
Federal Retirement Thrift Investment Management System
(5 USC 8471-8479)

We are principally concerned with Subchapter III and Subchapter VII, although the statutory definition of the Board contained in Subchapter I, 5 USC 8401(5) is very important: "...the term 'Board' means the Federal Retirement Thrift Investment Board established by section 8472(a) of this title;..."

Section 8472(a) reads, "There is established in the executive branch of the Government a Federal Retirement Thrift Investment Board."

Section 8472(b) makes it clear that the Board is not the Federal Retirement Thrift Management System, but is the five of us, period. The Board shall be composed of -- ..." [five appointees].

[It is clear throughout Chapter 84 that the Office of Personnel Management has the extensive responsibilities and burdens that Frank describes in his letter. This does not relieve us, however, of all responsibility for contributing to the achievement of the purposes of the ACT, which include "to encourage Federal employees to increase personal savings for retirement;" (Section 100A(6) of the ACT). This provision supports our desire to market this program as opposed to simply building and administering it in a passive fashion. I believe this provision

also supports our desire to insure, within the limits of our resources and statutory charter, high quality service to employees.]

Subchapter III establishes the Thrift Savings Plan and provides very explicit mandates relating to its design and operation. This Subchapter assigns specific responsibilities and authorities to the Executive Director. To the extent so assigned, no policies or directives of the Board are required to enable these responsibilities and authorities. To the extent Board policies or directives for the administration of Subchapter III are adopted, they may expand or clarify the responsibilities and authorities of the Executive Director assigned directly by law, but they obviously may not contradict statutory duties and prerogatives.

Subchapter VII is our principal guidance for the governance of the program, including the way we govern ourselves.

The Board

Section 8472(f) says the Board SHALL "establish policies for the investment and management of the Thrift Savings Fund ... and the administration of subchapter III..."; SHALL "review the performance of investments made for the Thrift Savings Fund..."; and SHALL "review and approve the budget of the Board."

Section 8472(g) says the Board MAY "adopt, alter, and use a seal..."; MAY "direct the Executive Director to take such action as the Board considers appropriate to carry out the provisions of this subchapter [VIII] and subchapter III ...", except with respect to specific investments in funds other than the G fund; MAY "upon the concurring votes of four members, remove the Executive Director from office for good cause shown..."; and MAY "take such other actions as may be necessary to carry out the functions of the Board."

[That last clause is all the authority we need to prescribe bylaws and provide for committees.]

The Executive Director

Section 8474(b) says the Executive Director SHALL "carry out the policies established by the Board..."; SHALL "invest and manage the Thrift Savings Fund in accordance with the investment policies and other policies established by the Board..."; SHALL "purchase annuity contracts and provide for the payment of other benefits under subchapter III ..."; SHALL "administer the provisions of this subchapter [VIII] and subchapter III..."; SHALL "prescribe such regulations (other than regulations relating to fiduciary responsibilities) as may be necessary for the administration of this subchapter [VIII] and subchapter III ..."; and SHALL "meet from time to time with the [Thrift Advisory]

Council upon request of the Council."

Section 8474(c) says the Executive Director MAY "prescribe such regulations as may be necessary to carry out the responsibilities of the Executive Director under this section, other than regulations relating to fiduciary responsibilities..."; MAY "appoint such personnel as may be necessary to carry out the provisions of this subchapter [VII] and subchapter III..."; MAY "subject to approval by the Board, procure the services of experts and consultants under section 3109 of this title..."; MAY "secure directly from an Executive agency, the United States Postal Service, or the Postal Rate Commission any information necessary to carry out the provisions of this subchapter [VII] or subchapter III ... and policies of the Board..."; MAY "make such payments out of sums in the Thrift Savings Fund as the Executive Director determines are necessary to carry out the provisions of this subchapter [VII] and subchapter III ... and the policies of the Board..."; MAY "pay the compensation, per diem, and travel expenses of individuals appointed under paragraphs (2) [his staff], (3) [experts and consultants], and (7) [intermittent Government employees] ... from the Thrift Savings Fund..."; MAY "accept and use the services of individuals employed intermittently in the Government service and reimburse such individuals for travel expenses... including per diem ..."; MAY "except as otherwise expressly prohibited by law or the policies of the Board, delegate any of the Executive Director's functions to such employees under the Board as the Executive Director may designate and authorize such successive redelegations of such functions to such employees under the Board as the Executive Director may consider to be necessary or appropriate..."; and MAY "take such other actions as are appropriate to carry out the functions of the Executive Director."

[In light of certain comments in Frank's letter I feel it is necessary to point out that while Section 8474(c) gives the Executive Director certain prerogatives that do not require Board policy or directive to enable and which are not susceptible of abridgement by Board policy or directive, this section may not be used by the Executive Director to frustrate Board policies or directives under Sections 8472(f) and 8472(g). Thus, he may, for instance, subject to our approval engage an expert or consultant on his own initiative. He may not, however, refuse to engage, or refuse to pay, an expert or consultant that we direct him to engage, even if he objects to the engagement.]

Investment Policy

Section 8475 says the Board SHALL "develop investment policies...."

The statute here says that the five of us shall develop investment policies. It does not say "approve" or "adopt" or "establish". That we must establish investment policy is already taken care of by Section 8472(f)(1)(A) of the Code. That we must

also "develop" those policies to provide for "(1) prudent investments suitable for accumulating funds for payment of retirement income; and low administrative costs" is an added responsibility under section 8475. It is for this reason that I have consistently resisted the notion that the Executive Director and his staff should develop these policies. We have that responsibility and I do not want to delegate it.

Self-Determination

Section 8476(a) says that the Board SHALL meet monthly and at additional times at the call of the Chairman. It does not say that only the Chairman may convene a meeting.

Section 8476(b) says that the Board SHALL "perform the functions and exercise the powers of the Board on a majority vote of a quorum of the Board..." except for the appointment or removal of the Executive Director. It does not say that we must be in a meeting to perform our functions or exercise our powers. We can act under Section 8472(g)(1)(D) as three of us did on October 15 when we authorized Roger to operate in the capacity of "Executive Director pro tem" pending Frank's arrival.

* * * * *

If we're going to adhere rigorously to the "statutory framework" and if we are going to be very careful not to improperly delegate our responsibilities, let's first be sure we're all reading the same statute, that we know who the "we" are that we're talking about, and that we've got the responsibilities straight.

CONCLUSION

Roger is reluctant to call a special meeting on organizational matters. I will be content to wait for the April 27 meeting to travel to Washington again if, in the meantime, we can continue to make progress on these matters by indicating clearly how we intend to vote, in principle, on the various issues currently facing us so that the "sense of the Board" can develop prior to the meeting. To the extent that we can circulate specific resolutions and forms of bylaws, etc., among ourselves and communicate by telephone or letter on these proposals, we may be able to have a very efficient April 27 meeting. The more the issues are examined and discussed prior to the formal meeting, the more likely this is to be true. (And, incidentally, the more likely it is that we can conclude our formal business within the 3 hour guideline that Frank suggests in his April 2, 1987, memorandum to all of us. I do want to be clear, however. I do not view the 3 hour guideline as binding in any sense, and I will devote as much time in a meeting as is necessary and reasonably practicable to get the job done.)

I have attempted here to explain my reasons for supporting

various alternatives in terms of upcoming business and how I intend to vote on various matters, in principle. I will be immediately forthcoming on my intentions with respect to specific proposals as I see them.

Again, I thank Frank for helping to clarify some of the issues and, in the process, for moving us along. I look forward to hearing from other Board members on these matters.

April 15, 1987

Francis X. Cavanaugh
Executive Director
Federal Retirement Thrift Investment Board
1717 H. Street N.W., Suite 214
Washington, D.C. 20026

Dear Frank:

On March 19th, I prepared (as suggested by Chairman Mehle in the February 16th meeting), a lengthy memorandum detailing several issues which I felt the Board needed to address. These issues dealt with both operational and planning policy development relating to management systems, disciplines, performance standards and accountability processes concerning the implementation and continuity of the Thrift Plans operational effectiveness, fiscal integrity, and responsive management oversight.

I must add that many of these same concerns which lead to my memorandum were only increased by the many, many questions raised by Price Waterhouse in their March 16th audit, concluding with their recommendation that they "urge" the Board to provide employee benefits expertise to NFC.

I asked only that these matters be brought to the Board and their agenda for review and discussion.

Certainly no one would question that your current most immediate priorities were to build and deliver an effective administrative service capability to meet operational requirements for employee investments, individual participants record-keeping functions, statement benefit distributions, for an April 1st delivery date.

I have several times, personally and in my recent letter and Board memorandum of March 19th stated these same points. In fact, I commended your efforts in my comments to the House Civil Service and Post Office Committee during the recent hearings.

The issues which I recommended for discussion are clearly policy formulation and long range matters which in no way should effect or disrupt these efforts.

As you noted in your letter, since both you and Chairman Mehle had failed to review the memorandum prior to the March 23rd Board Meeting, it was agreed that we would pursue these issues at our April meeting.

I was therefore surprised, disappointed, and in fact disturbed by your April 2nd letter in which you arbitrarily dismiss certain of these issues as being unworthy for Board discussion, and then totally distort and obfuscate others.

While I have no problem with your right to input and respond to each of the issues (in fact I would expect it), I resent very much what is apparently an attempt to distort my inquiries and issues as either:

- (1) proposing to "stop" all operations while we make numerous operational changes requiring statutory amendments, or;
- (2) implying that I am some simple-minded country bumpkin from Oklahoma who;
 - (a) simply does not understand the complexity, magnitude, or priorities of the requirements for the Board's mission;
 - (b) proposes to disrupt and impair the critical day-to-day requirements of the Plan;
 - (c) does not appreciate the level of competence, commitment and performance of its management (therefore you spent almost two of your six page letter detailing the most self-serving commentary I have seen in thirty years) and;
 - (d) and who needlessly proposes to spend vast sums of money to provide either services or oversight which clearly can be best handled by staff (at least in the opinion of same staff) or is unnecessary (again in the opinion of staff). Certainly Price Waterhouse's report and recommendation support a clear need for very specific expertise which obviously is absent.

Clearly, each of my suggested issues, except for the six "Congressional Considerations", specifically noted that if there was any question of statutory authority, then any policy or activity would have to be established consistent with Public Law 99-335 and other regulatory requirements.

And none of the suggested "Congressional Considerations" (which either might require statutory changes or simply clarification of intent) would in any way effect the operational and policy issues or priority considerations you discuss under "statutory changes".

I am disappointed you have chosen this method to deal not only with the specific issues in my memorandum but also with what is obviously, in your mind, a misguided effort representing both unwarranted and unneeded interference by a Board Member.

And while I personally resent this type effort to impeach both my judgement and credibility, I even more emphatically protest your efforts to arbitrarily decide:

- (1) what issue's the Board should or should not consider;
- (2) how we may or may not propose to discharge our roles and responsibilities pursuant to both the statute and as fiduciaries;
- (3) even worse, to advise/or threaten the Board that we must be extremely delicate with the level of audit and inspection we might impose upon you and your staffs activities as you cannot "tolerate" very much of that!

Obviously, other Board members feel the same. Witness Member Clyne's fourteen page response of April 4th which deals point-by-point with your letter.

I regret very much the need for such a strong protest to both your attitude and specifically your April 2nd letter.

These issues would have been much better discussed and resolved in person than in print, which is why I asked they be made part of our Board discussions.

Unfortunately, I cannot let your letter, which was obviously intended for outside readership, go unanswered.

I look forward to a full discussion of these issues at our April meeting.

Yours very truly,

John David Davenport

JDD/jr



Congressional Research Service
The Library of Congress

November 3, 1987

Washington, D.C. 20540

TO : Senate Committee on Governmental Affairs
Attention: Edward Gleiman

FROM : American Law Division

SUBJECT : Federal Retirement Thrift Investment Board: Reimbursement of
Board Members' Legal Expenses

INTRODUCTION

This memorandum is in response to your request for a determination of the authority of individual members of the Federal Retirement Thrift Investment Board to engage outside counsel on matters pertaining to the discharge of their Board-related duties. Specifically, you ask whether the Board has any obligation or authority to reimburse an individual member for expenses incurred in connection with such an act.

BACKGROUND

Under the Act establishing the Federal Employees Retirement System (FERS Act),¹ the Federal Retirement Thrift Investment Board (Board) was established to invest and manage employee savings in the FERS thrift plan. Composed of five members, the Board is required to establish policies for the investment and management of the Thrift Savings Fund (Fund) operated as part of the new retirement system for federal employees. As required by law, the Board has appointed an Executive Director, who, in turn, has appointed a staff, including General Counsel and other attorneys.

¹ Federal Employees' Retirement System Act of 1986, Pub. L. 99-335, 100 Stat. 514, June 6, 1986.

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At the Thrift Board meeting of March 23, 1987, it was proposed that the Board hire an outside law firm to advise the members on their role for purposes of finding a safe harbor. The following resolution was moved, seconded, and adopted by unanimous vote:

MOTION: That Chairman Mehle or Mr. Cavanaugh (depending on the legality of the Chairman expending Board funds) be authorized to hire an outside law firm to advise the members with respect to their liabilities and what actions can be taken with respect to those liabilities.

According to the minutes, Mr. Cavanaugh, the Executive Director, indicated that he would look into any legal questions regarding the hiring of outside counsel.²

At the April 27, 1987 meeting, Mr. Davenport said that three members (Davenport, Clyne, and Monks) had hired Mr. Ross of Arnold and Porter to provide representation to them as Board members, on their responsibilities, specifically fiduciary responsibilities. At the April 27th meeting, the Board unanimously adopted the following motion:

MOTION: That the authorization given to the Chairman at the March meeting to hire an outside legal counsel be annulled.³

One of the Board members subsequently requested reimbursement of the expenses incurred by the members retaining the law firm between the March and April meetings. By letter of July 15, 1987, reimbursement of the incurred legal expenses was requested from the Board's General Counsel.⁴

² Minutes of Meeting of Fed. Retirement Thrift Investment Board (FRTIB), Mar. 23, 1987, at 3.

³ Minutes of Meeting of FRTIB, Apr. 27, 1987, at 8.

⁴ Letter from Robert A.G. Monks, Member, FRTIB, to Robert Bloom, General Counsel, FRTIB, Jul. 15, 1987. The letter referred to section 8477(d)(2), which provides that section 8477 (pertaining to fiduciary responsibilities) does not prohibit a fiduciary from receiving reasonable compensation for services rendered, or for reimbursement of expenses properly and actually

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In a Memorandum dated July 20, 1987, the General Counsel ruled that the fees for outside counsel were not reasonable expenses and thus would constitute an imprudent expenditure of Plan funds. He concluded, first, that the proper role of the legal staff of the Board is to advise the Board and the Executive Director with respect to all questions of law arising out of the operations of the Thrift Savings Plan.

Second, he noted that there is no rule or statute that would make it illegal per se for the Plan to employ outside counsel who would report to the Board, but that the client of such outside counsel would have to be the Plan. He concluded that the payment of Plan monies for attorneys engaged to advise Board members individually, or on matters where the interests of the Board members were not the same as the Plan's interest, could be interpreted as a prohibited transaction under 5 U.S.C. § 8477(c)(2).

Third, the General Counsel concluded, as a matter of fact, that the fees of outside counsel could not be defended as "reasonable expenses of administering the Thrift Savings Fund," within the meaning of Title 5, U.S. Code section 8477(b)(1)(A)(ii), and thus would constitute an imprudent expenditure of Plan funds. On August 18, 1987, the General Counsel confirmed that the services of the retained law firm were within the category of such imprudent expenses.

STATUTORY PROVISIONS

1. Thrift Investment Board

Under the Act establishing the Federal Employees Retirement System, the Federal Retirement Thrift Investment Board is composed of five members appointed, in the performance of the fiduciary's duties.

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ed by the President subject to Senate confirmation. According to the legislative history, Congress designed the system to parallel private sector practice where possible, but took into account the special political and economic considerations presented by a large scale thrift plan for the federal retirement system: "To the extent possible, the Federal Retirement Thrift Investment Management System meets the requirements of the Employee Retirement Income Security Act of 1974 (ERISA)."⁵

Members of the Board must have substantial experience, training, and expertise in the management of financial investments and pension benefit plans.⁶ The Board is required to establish policies for the investment and management of the Thrift Savings Fund (Fund) and the administration of subchapter III (relating to the Thrift Savings Plan), to review the performance of investments for the Fund, and to review and approve the budget of the Board. In addition, the Board is authorized (a) to utilize a seal, (b) to direct the Executive Director to take such action as the Board considers appropriate to carry out the relevant provisions of the law and the policies of the Board, (c) to remove the Executive Director from office "for good cause shown," upon concurrence of four members, and (d) to take such other actions as may be necessary to carry out the functions of the Board.⁷

Under the FERS Act, the Board, except for the appointment and removal of the Executive Director, "shall perform the functions and exercise the powers of

⁵ Sen. Rep. No. 99-166, 99th Cong., 1st Sess. 72 (1985). ERISA is codified at 29 U.S.C. § 1001 et seq.

⁶ 5 U.S.C. § 8472(d).

⁷ 5 U.S.C. § 8472(g)(1).

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the Board on a majority vote of a quorum of the Board."⁸ Three members constitute a quorum,⁹ and a vacancy on the Board does not impair the authority of a quorum to perform the functions and exercise the powers of the Board.¹⁰ Each member of the Board who is not an officer or employee of the United States is compensated at the daily rate for a GS-18 for each day engaged in performing a function of the Board.¹¹

An action agreed to by a majority of the members of the Board is required to authorize the appointment of an Executive Director for the Thrift Savings Fund.¹² The Executive Director is required, among other duties, to "carry out the policies established by the Board."¹³ The Executive Director may appoint such personnel as may be necessary to carry out the provisions of the law and, subject to the approval of the Board, may procure the services of experts and consultants under section 3109 of Title 5 of the U.S. Code.¹⁴

Section 3109 of Title 5 authorizes the head of an agency, when authorized by an appropriation or other statute, to procure temporary services of up to one year by contract of experts or consultants. An agency, however, may not pay a rate for services under section 3109 in excess of the daily equivalent of the highest rated payable under the General Schedule unless "specifically

⁸ 5 U.S.C. § 8476(b)(1).

⁹ 5 U.S.C. § 8476(b)(3).

¹⁰ 5 U.S.C. § 8476(b)(2).

¹¹ 5 U.S.C. § 8476(d)(1).

¹² 5 U.S.C. § 8474(a)(1).

¹³ 5 U.S.C. § 8474(b)(1).

¹⁴ 5 U.S.C. § 8474(c)(3).

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authorized the appropriation or other statute authorizing the procurement of the services."¹⁵

2. Fiduciary responsibility and prohibited transactions

The term "fiduciary" includes a member of the Federal Thrift Board. A fiduciary with respect to the plan must discharge his responsibilities "solely in the interest of the participants and beneficiaries and--(A) for the exclusive purpose of--(i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the Thrift Savings Fund..." The fiduciary must act "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent individual acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like objectives." To the extent permitted by law, the fiduciary must diversify investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.¹⁶ The general fiduciary responsibilities are substantially the same as those imposed on plan trustees by section 403 of ERISA.¹⁷ Under both ERISA and the FERS Act, the fiduciary is held to a higher standard, that of an individual "familiar with such matters," than the common law standard, that of an individual investing his own money.

Fiduciaries are barred from engaging in certain enumerated "prohibited transactions" modelled on counterpart provisions of the ERISA.¹⁸ Under section

¹⁵ 5 U.S.C. § 3109.

¹⁶ 5 U.S.C. § 8477(b)(1).

¹⁷ 29 U.S.C. § 1103.

¹⁸ 29 U.S.C. § 1006.

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8477(c)(1) of the FERS Act, transactions between the Fund and certain parties in interest are restricted. In general, a fiduciary may not permit the Fund to engage in any of the following transactions, except in exchange for adequate consideration: (A) transfer of assets of the Fund to a party in interest or use of the assets by such person; (B) acquisition of property from or sale of any property to the Fund by a party in interest; or (C) transfer or exchange of services between the Fund and a party in interest.¹⁹ A "party-in-interest" includes, among others, any fiduciary; any counsel to a person who is a fiduciary, with respect to the actions of such person as a fiduciary; and any person providing services to the Board.²⁰

Section 8477(c)(2) prohibits transactions involving the Fund and its fiduciaries. First, a fiduciary may not deal with any assets of the Fund in his own interest or for his own account.²¹ The legislative history of the corresponding provision of ERISA indicates that this does not prohibit a fiduciary from dealings where he has an account in the plan and the dealings apply to all plan accounts without discrimination.²²

Second, a fiduciary may not act, in an individual or any other capacity, in any transaction involving the Fund on behalf of a party, or representing a party, whose interests are adverse to the interests of the Fund or the inter-

¹⁹ 5 U.S.C. § 8477(c)(1). Under a parallel ERISA provision, section 406(a)(1), a fiduciary may not cause the plan to engage in a transaction that constitutes a transfer of any assets of the plan to a party in interest. ²⁹ U.S.C. § 1106(a)(1)(E).

²⁰ 5 U.S.C. § 8477(a)(4)(A), (B) & (D).

²¹ 5 U.S.C. § 8477(c)(2)(A).

²² H.R. Conf. Rep. No. 93-1280, 93d Cong. 2d Sess. 309 (1974); see ²⁹ U.S.C. § 1106(b)(1).

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ests of its participants and beneficiaries.²³ According to the legislative history of the corresponding provision of ERISA, the intent was to prohibit representation of parties with adverse interests, and to prevent a fiduciary from being put in a position where he had dual loyalties, and, therefore, could not act exclusively for the benefit of a plan's participants and beneficiaries.²⁴ Third, the fiduciary may not receive any consideration for his own personal account from any party dealing with sums credited to the Fund in a transaction involving Fund assets.²⁵ This was intended to prevent kickbacks to a fiduciary.²⁶

A fiduciary of the plan is not prohibited from "receiving any reasonable compensation authorized by this subchapter [Subchapter III, Thrift Saving Plan] for services rendered, or for reimbursement of expenses properly and actually incurred, in the performance of the fiduciary's duties under this chapter [Chapter 84, Federal Employee's Retirement System]."²⁷ This section is substantially identical to section 408(c)(2) of ERISA, which provides that the prohibited transaction rules of ERISA shall not be construed to prohibit a private pension fund fiduciary from receiving reasonable compensation for reimbursement of expenses properly and actually incurred in the performance of

²³ 5 U.S.C. § 8477(c)(2)(B).

²⁴ H.R. Rep. No. 93-1280 at 309; see 29 U.S.C. § 1106(b)(2); *Brink v. DaLesio*, 496 F. Supp. 1350, 1368 (D. Md. 1980). This provision was not included in the ERISA tax provisions because of the difficulty in determining an appropriate measure for an excise tax.

²⁵ 5 U.S.C. § 8477(c)(2)(C).

²⁶ H.R. Rep. No. 93-1280 at 309; see *Brink v. DaLesio*, 496 F. Supp. 1350, 1367 (D. Md. 1980).

²⁷ 5 U.S.C. § 8477(d)(2).

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duties with the plan.²⁸ The excise tax provisions of ERISA also provide an exemption for the reimbursement of expenses properly and actually incurred in the performance of duties with the plan.²⁹

3. Prohibited transaction exemptions

The FERS Act, unlike ERISA, contains no statutory exemptions to the prohibited transaction provisions. The Secretary of Labor is authorized to grant administrative exemptions from the restrictions in section 8477(c)(2) on fiduciaries' dealing with Fund Assets, but does not have authority to grant exemptions for the transactions between parties in interest and the Fund barred by section 8477(c)(1).³⁰ ERISA, on the other hand, contains numerous statutory exemptions from its prohibited transaction provisions, and grants the Secretary of Labor broader administrative exemption authority.

ERISA defines a party in interest to include, among others, a fiduciary and a person providing services to the plan.³¹ Section 408(b)(2) of ERISA provides an exemption for transactions involving contracting or making reasonable arrangements with a party in interest for legal services necessary for the establishment or operation of the plan "if no more than reasonable compensation is paid therefore."³² Section 408(c)(2) of ERISA permits the fiduciary to receive reasonable compensation for the reimbursement of expenses properly and

²⁸ 29 U.S.C. § 1108(c)(2).

²⁹ 26 U.S.C. § 4975(d)(10).

³⁰ 5 U.S.C. § 8477(c)(3).

³¹ 29 U.S.C. § 1002(14).

³² 29 U.S.C. § 1108(b)(2).

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actually incurred in the performance of his duties with the plan, without running afoul of the prohibited transaction restrictions.³³

Under Labor Department regulations interpreting sections 408(b)(2) and 408(c)(2), the question whether compensation is "reasonable" depends on the particular facts and circumstances of each case.³⁴ In general, any compensation which would be considered excessive under income tax regulations relating to the deductibility of compensation for personal services which constitute an ordinary and necessary trade or business expense will not be "reasonable." Depending on the facts and circumstances, compensation which is not excessive under tax regulations may nevertheless be unreasonable under sections 408(b)(2) and 408(c)(2).³⁵

Under the tax regulations, the test of deductibility is whether compensation payments are reasonable and are in fact payments purely for services.³⁶ In general, the allowance for the compensation paid may not exceed what is reasonable under all the circumstances; reasonable and true compensation is only such amount as would ordinarily be paid for like services by like enterprises under like circumstances; the circumstances are those existing when the contract for services was made, not those on the date when the contract is questioned.³⁷

³³ 29 U.S.C. § 1108(c)(2).

³⁴ 29 CFR 2550.408c-2(1986).

³⁵ 29 CFR § 2550.408c-2(b)(5)(1986).

³⁶ 26 CFR § 1.162-7(a)(1987).

³⁷ 26 CFR § 1.162-7(b)(3)(1987).

4. Enforcement provisions

Enforcement provisions of the FERS Act are similar to those of ERISA. A civil action may be brought by the Secretary of Labor, or by any participant, beneficiary, or fiduciary, to enjoin any act or practice which violates any fiduciary responsibility provision of subsection 8477(b) or (c), or to obtain any other appropriate equitable relief to redress a violation of any such provision. The district courts of the United States have exclusive jurisdiction over such actions.³⁸ Unlike ERISA, however, the FERS Act enforcement provisions make no provision for the award of attorneys' fees or costs to any party.³⁹

The Secretary of Labor may also assess a civil penalty against a party in interest for each prohibited transaction in the amount of 5 percent of the amount involved in each transaction. If the transaction is not corrected within 90 days after the Secretary transmits notice to the party in interest, the penalty may up to 100 percent of the amount involved.⁴⁰ These provisions correspond to the excise taxes levied by ERISA on prohibited transactions by private employee plan trustees. Finally, the Secretary of Labor is authorized to prescribe regulations to carry out the fiduciary responsibility provisions of the Act.⁴¹

³⁸ 5 U.S.C. § 8477(e)(4)(A).

³⁹ Under ERISA, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party in any civil enforcement action. 29 U.S.C. § 1132(g)(1).

⁴⁰ 5 U.S.C. § 8477(e)(1)(B). Reference is made to regulations issued by the Secretary under the excise tax provisions of ERISA, 26 U.S.C. § 4975.

⁴¹ 5 U.S.C. § 8477(f).

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DISCUSSION

The questions presented are whether the individual Board members have authority to engage outside counsel on matters pertaining to the discharge of their Board-related duties and whether the Board has any obligation or authority to reimburse an individual member for expenses incurred in connection with such an act. The questions must be analyzed in three stages to determine, first, if any statutory authority exists for such expenditures; second, if the expenditures would be prohibited by any provisions of the FERS Act; and, third, whether authority for the expenditures may be implied under the law. Because the FERS Act was deliberately patterned on ERISA in many respects, administrative and court interpretations of corresponding provisions of ERISA are relevant. Also relevant are those ERISA provisions which Congress declined to carry over into the statutory scheme of the FERS Act.

1. Statutory authorization

The FERS Act does not directly address the issue of legal counsel or advice for either the Board, its members, or the staff of the Executive Director. There appear to be three provisions which could be construed to authorize obtaining counsel. First, the Executive Director may appoint personnel to provide advice for both the Board members and Fund staff. Second, the Executive Director, subject to Board approval, may procure the services of outside experts and consultants where deemed necessary, subject to the compensation ceiling imposed by the General Schedule.

Third, the Board Members could be accorded reasonable compensation for expenses properly and actually incurred in the performance of their fiduciary duties. Under the corresponding provision of ERISA, the payment to trustees

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from fund assets may be justified under section 408(c)(2) as reasonable compensation for reimbursement of expenses incurred in the performance of duties with the plan. Under ERISA labor and tax regulations, reasonable and true compensation is, in general, "only such amount as would ordinarily be paid by like enterprises under like circumstances."⁴²

The question raised by possible reimbursement under the FERS Act is whether Board members may obtain legal counsel in their individual capacities rather than acting as the Thrift Investment Board. In general, The FERS Act constitutes the Board as a legal entity, and does not prescribe specific duties or responsibilities of individual Board members. Individual Board members, however, are fiduciaries and, as such, must discharge their responsibilities solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses of administering the fund. These obligations are virtually identical to those imposed on plan trustees under ERISA.

It has been noted that other independent, multi-headed agencies have general counsels and individual counsels assigned to the Commissioners.⁴³ The Thrift Board, however, is not constituted by statute as a regulatory agency or quasi-adjudicatory agency of the Federal Government. Rather, it is constituted as a board of trustees performing functions similar to those of employee benefit plan trustees under ERISA.

All actions by the Board are subject to the general fiduciary obligation to confine expenditures to the reasonable expenses of administering the Fund.

⁴² 26 CFR § 1.162-7(b)(3)(1987).

⁴³ Memorandum to Members of FRTIB from Robert A.C. Monks, May 28, 1987, at 2.

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The General Counsel concluded that as a matter of fact the fees of the outside counsel could not be defended as reasonable expenses of administering the Fund, and thus would constitute an imprudent expenditure. It appears that the determination whether a fund expenditure to reimburse individual Board members is reasonable may be made in the first instance by the Executive Director or his designee, since the Director is empowered to carry out the policies of the Board and to invest and manage the Fund in accordance with investment and other policies established by the Board.

The determination of reasonableness by the Executive Director or staff would be subject to review by the Board, since that body is required to establish policies for investment and management of the Fund and for its administration. The Board's authority, in turn, is subject to review by the Secretary of Labor and, ultimately, the federal courts. The Secretary is authorized to bring actions in federal court to determine and enforce liability for breach of fiduciary responsibility, and to collect any civil penalty imposed against a party in interest for a prohibited transaction. The Secretary, as well as a participant, beneficiary, or fiduciary, may sue to enjoin any act or practice which violates the prudence or prohibited transaction provisions of the Act or to obtain any other appropriate equitable relief. In such actions, it would ultimately be for the courts to determine whether the reimbursement of the individual members of the Thrift Board for the incurred expenses was reasonable under the circumstances.

2. Statutory prohibitions

Under the FERS Act, counsel retained by a fiduciary with respect to fiduciary actions is defined as a "party in interest" subject to prohibited

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transaction rules. Accordingly, both the Board members and the law firm retained as counsel to those members, with respect to their actions as fiduciaries, are fiduciaries pursuant to section 8477(a)(4)(B). Reimbursement of the law firm's fees by the Fund could be viewed as an indirect transfer of assets of the Fund to a party in interest, or as an indirect transfer or exchange of services between the Fund and a party in interest. Such a transaction, except in exchange for adequate consideration, could be deemed to be a prohibited transaction, unless excepted by a specific exemption in the Act.

Under ERISA, there is no corresponding provision deeming a counsel to a fiduciary as a party in interest. Under section 408(b)(2) of ERISA, moreover, payment of legal fees to a law firm might be justified as a contract or reasonable arrangement for legal services, provided no more than reasonable compensation were paid. The FERS Act, however, does not have a statutory exemption similar to section 408(b)(2) of ERISA.

To recapitulate, the FERS Act, unlike ERISA, provides that a counsel to a person who is a fiduciary, with respect to that person's actions as a fiduciary, is a party in interest. The FERS Act, again unlike ERISA, contains no exemption from its prohibited transaction provisions for contracts for legal services with parties in interest. Moreover, while under ERISA the Secretary of Labor may provide administrative exemptions for transactions between the plan and a party in interest as well as between the plan and a fiduciary, the FERS Act exemption process applies only to the restrictions on self-dealing, adverse interests, and kickbacks imposed by section 8477(c)(2). The Secretary is not authorized to provide exemptions from the prohibited transactions involving Fund assets and parties in interest enumerated in section 8477(c)(1).

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The General Counsel of the Fund concluded that payment of Fund monies to outside counsel to advise Board members individually or on matters where the interests of the Board members were not the same as the Fund's interest, could be a prohibited transaction under section 8477(c)(2), which prohibits a trustee from taking a position adverse to the Fund or its participants and beneficiaries.

Given the possibility that the payment of Fund assets could constitute such a prohibited transaction, it appears that the prudent course would be to apply to the Secretary of Labor for an exemption from the restrictions imposed by section 8477(c)(2). The Secretary of Labor may grant the exemption if it is administratively feasible, in the interests of the Fund and of its participants and beneficiaries, and protective of the rights of those participants and beneficiaries.

While retention of outside counsel under similar circumstances may be permitted under ERISA,⁴⁴ the same conclusion is not necessarily valid under the FERS Act. ERISA exempts contracts for legal services from all prohibited

⁴⁴ Under ERISA, plan trustees may expend plan assets for expert legal and financial advice concerning their fiduciary responsibilities. In IAM Stock Ownership Fund v. Eastern Air Lines, 639 F. Supp. 1027 (D. Del. 1986), the trustee of a private sector employee benefit fund asked the court to order the sponsoring employer to pay substantial legal and investment banker fees for financial advice to enable the trustee to make a decision whether to demand an appraisal of the employer securities held by the trust fund. The trustee argued that the sponsoring employer had to pay these expenses, since the trustee would otherwise be unable to obtain independent advice; under the terms of the trust and under ERISA, he argued, no part of the trust's assets could be used for any of the expenses of the trust. The court rejected this argument, finding, first, that the trust itself allowed the trustee to withdraw funds for the contemplated expenses; second, that under the common law of trusts the trustee could properly incur expenses which are necessary or appropriate to carry out the purposes of the trust; and, third, that ERISA permitted "reasonable expenses" for independent financial and legal advice, "provided, of course, that these expenses are solely for the benefit of the Trust and its participants." 639 F. Supp. at 1034.

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transaction provisions, while the FERS Act, although modelled on ERISA, contains no corresponding exemption. Rather, the FERS Act authorizes the Executive Director, subject to Board approval, to procure services of experts and consultants under civil service salary limitations. If legal counsel were to be retained at rates in excess of those authorized by section 3109 of Title 5, the court may consider it relevant in determining whether the Board had directed "reasonable compensation" for reimbursement of the expenses incurred. The court may also note the statutory requirement that Thrift Board members have substantial experience, training, and expertise in financial management in determining whether it was reasonable under the circumstances to reimburse members for the expenses incurred in retaining outside counsel.

The General Counsel also suggested that a retainer to an outside law firm to advise Board Members could be a prohibited transaction in violation of section 8477(c)(1) on the ground that the retainer was for the personal benefit of Board members. A transaction involving transfer of Fund assets to individual Board members who are fiduciaries could well be a prohibited transaction. Moreover, direct payment to the outside law firm retained by the Board members could also be deemed to be a transfer of assets to a fiduciary, unless in exchange for adequate consideration. Such payments cannot be exempted by the Secretary of Labor, and would be potentially subject to the 5 percent and 100 percent civil penalties which the Secretary may assess. As with fiduciary responsibility, the courts must finally determine whether the payment constituted a prohibited transaction between the Fund and a fiduciary.

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3. Implied authorization

From the background information discussed above, it is clear that the question of the reasonableness of reimbursement of the expenses incurred by the individual Board members has not been addressed by motion of the Board. The Board on March 23 first approved a motion authorizing the Chairman of the Board or the Executive Director to hire an outside law firm. The Board on April 22 approved a motion to annul the authorization given to the Chairman at the March meeting. Neither motion contained authorization for members to retain counsel by themselves. The question of the reasonableness of compensation for the legal expenses incurred by the individual members would therefore be one of first impression for the Board, when or if the matter is raised before the Board.

Under certain circumstances, outside counsel procured for the Board rather than for the staff may be necessary and proper. Since four members of the Board may remove the Executive Director for cause, if the occasion arose for the Board to consider the question of removal, it might have to rely on legal advice from someone other than the General Counsel, who is appointed by the Executive Director, and is subject to immediate day-to-day supervision and to removal by that official. Under circumstances of this kind, the Board may be authorized to direct the Executive Director to take appropriate actions to retain independent counsel for the Board members.

In some circumstances, it may even be necessary for one or more members of the Board to undertake legal actions or seek legal counsel as individuals rather than through action by the Board. Under ERISA, a fiduciary who is a member of a board of trustees may sometimes be required to act individually rather than through the board. Such circumstances would arise if the board

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itself proposed an imprudent or illegal course of action. Suppose the majority of trustees of a plan were ready to vote to construct a building to house the plan, but a minority argued that the action would be a violation of their general fiduciary responsibilities. What should the minority trustees do to protect themselves from liability under the Act? The Labor Department has advised:

A: Here, where a majority of trustees appear ready to take action which would clearly be contrary to the prudence requirements of section 404(a)(1)(B) of the Act, it is incumbent on the minority trustees to take all reasonable and legal steps to prevent the action. Such steps might include preparations to obtain an injunction from a Federal District court under section 502(a)(3) of the Act, to notify the Labor Department, or to publicize the vote if the decision is to proceed as proposed. If, having taken all reasonable and legal steps to prevent the imprudent action, the minority trustees have not succeeded, they will not incur liability for the action of the majority.⁴⁵

Nevertheless, it is not clear that the trustee acting to prevent an imprudent transaction under ERISA would necessarily be reimbursed for legal expenses from plan funds; in most instances, fees would be assessed against the persons who engaged in the imprudent actions. An assessment of fees against the plan's assets would have to be based on a theory of "equitable fund" or "common fund." The use of "common-fund theory most often occurs in actions seeking equitable relief where specific statutory guidelines underlying the award of attorneys' fees are not available."⁴⁶

In Eaves v. Penn⁴⁷, for example, the trustee had converted a plan into an employee stock ownership plan and had caused it to invest in employer securities. The participants brought suit; the trial court found that the trustee

⁴⁵ 29 C.F.R. § 2509.75-5 (1986)(question 10)(emphasis added).

⁴⁶ Eaves v. Penn, 587 F. 2d 453, 464 (10th Cir. 1978).

⁴⁷ 587 F. 2d 453 (10th Cir. 1978).

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had breached the fiduciary duty imposed by ERISA and awarded attorneys' fees to the counsel for the plan participants, to be paid out of assets recovered on behalf of the plan. On appeal, the court of appeals found that, under ERISA, the specific statutory authorization of attorneys' fees would, in most cases, eliminate the necessity which gave rise to the common fund basis for awards of attorneys' fees.

Under the ERISA statutory rule, Congress intended that the offending party bear the costs of an award, rather than the non-culpable, non-party plan participants.⁴⁸ Decisions under ERISA thus indicate that the proper course for the court is to assess the attorneys' fees against the fiduciaries who breached their statutory duty, rather than to pay the fees from plan assets. Given the absence of provision for attorneys' fees in the FERS Act, the courts may be more likely than under ERISA to award fees from the Fund in the remote event that private litigants successfully bring suit against the Fund to enjoin violations of fiduciary responsibility under the "equitable fund" or "common fund" doctrine.⁴⁹

⁴⁸ The court noted, however, that the common fund theory was not absolutely precluded under ERISA, and set forth the following factors to be considered on remand in determining whether to award fees against the plan fund or against the offending parties personally:

- (1) the degree of the offending parties culpability or bad faith;
- (2) the degree of ability of the offending parties to personally satisfy an award of attorneys fees;
- (3) whether or not an award of attorneys fees against the offending parties would deter other persons acting under similar circumstances;
- (4) the amount of benefit conferred on members of the pension plan as a whole; and
- (5) the relative merits of the parties positions.

587 F. 2d 453, 465 (10th Cir. 1978).

⁴⁹ The equitable fund doctrine has been described by the Supreme Court as "the historic power of equity to permit the trustee of a fund or property...to recover his costs, including his attorneys' fees, from the fund or property itself or directly from the other parties enjoying the benefit." *Alyeska Pipeline Co. v. Wilderness Soc.*, 421 U.S. 240, 257 (1975). The "common fund"

CONCLUSION

The question whether the FERS Board has any obligation or authority to reimburse individual members for expenses incurred in retaining outside counsel is complex. In general, compensation must be prudent and must be no more than "reasonable"; what is reasonable depends on the particular facts and circumstances of each case, usually, the amounts paid by like enterprises in like circumstances. Under the FERS statutory structure, provision of legal and other expert advisors is conventionally procured under civil service salary limits. Determination of prudence and reasonableness must be made in the first instance by the Board, subject to court review.

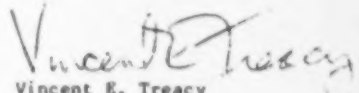
Transfer of Fund assets to a law firm which is a fiduciary by virtue of its counsel to Board members, if not in exchange for adequate consideration, may be a prohibited transaction. Reimbursement of individual members may constitute a prohibited transaction to the extent that the members' interests are adverse to the interests of the Fund or its participants or beneficiaries. The Secretary of Labor may interpret the prohibited transaction provision, and, in the case of adverse interest, issue an administrative exemption. Again, any determination by the Board is subject to review by the Secretary of Labor and the courts.

doctrine constitutes an exception to the general American rule that attorney's fees are not ordinarily recovered as costs; exceptions have been developed to the rule for situations in which overriding considerations indicate the need for such recovery: "A primary judge-created exception has been to award expenses where a plaintiff has successfully maintained a suit, usually on behalf of a class, that benefits a group of others in the same manner as himself....To allow others to obtain full benefit from the plaintiff's efforts without contributing equally to the litigation expenses would be to enrich the others unjustly at the plaintiff's expense." *Mills v. Electric Auto-Light Co.*, 396 U.S. 375, 392 (1970).

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In general, there appears to be no showing that outside counsel would have been necessary for Board members to prevent immediate fiduciary violations. Moreover, it has not been asserted that independent counsel was immediately necessary to review questions related to removal of the Executive Director, where the advice of the attorneys subordinate to that official may be less than independent.

In view of the foregoing analysis, it can be seen that serious questions may be raised under the FERS Act with respect to reimbursement of outside counsel expenses. Such reimbursement would be subject to challenge on grounds that the retention of individual counsel is not expressly authorized by the Act; that the reimbursement is not a reasonable expense of administering the Fund, and that the compensation exceeds a reasonable amount; that payment from Fund assets may constitute a prohibited transaction between the Fund and the individual Board members or between the Fund and the law firm; and, finally, that there appear to be no extraordinary or exceptional circumstances that might justify departure from the conventional statutory scheme for procurement of such services.


Vincent E. Treacy
Legislative Attorney

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